

SECTION II. CLEARANCE PROCEDURESPart 1. FACILITY SECURITY CLEARANCES AND DENIALS

2-100 Application. This part establishes the procedures for granting FCL's to contractors where access to classified information is required in order to perform tasks or services essential to the fulfillment of UA contracts, subcontracts, projects, or programs. This part also outlines the procedures for the denial, suspension, or revocation of FCL's.

2-101 Eligibility for Access. Classified information shall be furnished only to a contractor or subcontractor who holds a valid FCL at the appropriate level, has a need-to-know, and has the capability for safeguarding the information.

2-102 Facility Security Clearances.

a. A FCL is an administrative determination that the facility is eligible, from a security viewpoint, for access to classified information of the same or lower security category as the level of clearance being granted. FCL's will not be granted to contractor activities located outside the U.S., Puerto Rico, or a U.S. possession or trust territory. FCL's may be granted only to contractors organized and existing under the laws of the U.S. or Puerto Rico. Contractors organized and existing under the laws of a U.S. possession or trust territory may not be processed for or granted a clearance, except with the prior approval of the Deputy Director (Industrial Security), HQ DIS based on a case-by-case review of pertinent and current laws to determine the eligibility of the facility for the requested clearance. Facilities which are determined to be under FOCI are not eligible for a FCL (paragraph 2-201). Exceptions may be made when the foreign ownership or control emanates from a country with which the U.S. has entered formal reciprocal arrangements (see paragraph 2-117). A FCL (or interim FCL when so authorized) is required for prospective bidders or contractors prior to granting them access to classified information. Classified information which is of a higher category than the level of a FCL shall not be disclosed to that facility, its representatives, or employees, except to employees as authorized in paragraph 2-301a(2).

b. As an emergency measure and in order to avoid crucial delays in precontract or contract negotiations, the award of contract, or the performance on a contract, an interim FCL based on lesser investigative requirements may be granted on a temporary basis, pending the completion of the full investigative requirements. A UA when requesting the CSO to initiate interim FCL action, shall submit the reasons for such action at the time the clearance is requested, indicate the effect that any crucial delays will have on its precontract or contract negotiations, contract award, or contract performance, and state the level of FCL requested. The CSO shall comply with the request of the UA to initiate a FCL action, and will simultaneously take the action to effect an interim FCL. The authorization in connection with an interim TOP SECRET FCL will be made by the head of the UA or by his or her designated representative, and shall be furnished to the CSO which will process and grant the interim FCL. The CSO shall forward a copy of the authorization for interim FCL to DISCO. Actions as described in this subparagraph shall be clearly identified as an interim FCL.

2-103 Responsibility for Effecting a Facility Security Clearance. The CSO which has assumed cognizance of a facility shall be responsible for the processing of a FCL or interim FCL as may be required. Any prior industrial FCL actions that may have been accomplished prior to the issuance of this regulation, provided that these actions meet the standards prescribed in this regulation, shall not be duplicated, but shall be accepted by the CSO in effecting the FCL. Responsibility of the CSO for granting FCL's shall include performing the necessary DD Form 374 survey and requesting DISCO to process OODEPs as prescribed in paragraph 2-113 for a PCL at the same level as the FCL.

2-104 Types of Facilities. Generally, facilities are considered to be separate entities in accordance with the definition contained in paragraph 1-229. However, the following factors must also be taken into account where present.

a. When clearing a facility of a MFO, the EOF shall have a FCL of the same or higher level.

b. When a parent-subsidary relationship exists, the general rule is that the parent shall have a FCL of the same level or higher than the subsidiary. Paragraphs (1) and (2) below contain exceptions to this general rule.

(1) The parent may have a FCL of a lower level than that held by its subsidiary, if, by formal action of its board of directors or similar executive body, it is excluded from access to classified information held by the subsidiary company which is of a higher classification category than the parent company's FCL, and officers and directors of a subsidiary who hold similar positions in the excluded parent company furnish written certification to the CSO of each cleared subsidiary in accordance with paragraph 72a, ISM.

(2) The parent may be excluded from the requirement for a FCL if, by formal action of its board of directors or similar executive body, it is excluded from access to all classified information and delegates full authority to the subsidiary to act completely independently of the parent in all matters which involve or relate to the subsidiary's responsibility to safeguard classified information. In addition, the parent and the subsidiary shall execute a DD Form 441s prior to the granting of the FCL to the subsidiary. In this regard the CSO having jurisdiction in the area where the excluded parent is located shall be responsible for accomplishing the following actions.

(a) Request excluded parent to execute the DD Form 441s.

(b) Evaluate any element of FOCI which may be present within the excluded parent "in the same manner as though the excluded parent were being processed for a FCL.

(c) Establish a facility case file on the excluded parent to record the action which is taken with regard to the FOCI question.

(d) Make an annual visit to the excluded parent to specifically determine if there have been any changes to the information previously provided on the DD Form 441s and to remind the excluded parent of its continuing responsibility to notify the CSO of any changes as they occur. Officers and

directors of a subsidiary who hold similar positions in the excluded parent company shall furnish certifications prescribed in paragraph 72a, ISM. The responsibility for obtaining such certifications is vested in the CSO having -Jurisdiction over the subsidiary. Subsidiaries of parent organizations which are under FOCI are not eligible for clearance, except as provided for in paragraph 2-117. Whenever a parent becomes foreign owned, controlled, or influenced and the provisions of paragraph 2-117 are not applicable, the FCL of the subsidiary shall be terminated. Exclusion actions, as described in paragraphs (1) and (2) above, shall be made a matter of record in the minutes of the executive body of both the parent and the subsidiary. Two copies of both sets of minutes, identified by name, address, and date of submission, shall be obtained by the CSO processing the clearance of the subsidiary facility.

c. Parent firms at all levels of the inter-corporate structure shall be processed for FCL or formal exclusion. This shall include the ultimate parent as well as any intermediate subsidiaries through which it may exercise ownership and control of the cleared company. However, if the immediate parent of the subsidiary elects to be excluded, all other parents in the multi-level corporate group must also be excluded, unless an independent clearance need exists.

d. Activities of a contractor which are located in a given geographical area under the same CSO may qualify for a single FCL, if the following conditions hold true. .

(1) The activities of the contractor are under the direct supervision or management responsible for the day-to-day operations of all activities.

(2) A centrally directed security program is maintained, covering all activities consisting of the following elements: same name, single mailing address<sup>1/</sup>, single SPP applicable at all locations, a unified document control system so organized as to permit the prompt location of any classified document within the various activities by a review of the records maintained at one or more of the control stations established under paragraph 12, ISM, and all security matters are under single management control.

(3) The distance between the activities is such that the contractor is able to maintain daily supervision of their operations, including day-to-day surveillance of the security program. Normally, the distance between any of the activities should not exceed 1 hour ground traveling time, except where the extent of classified activity, such as that normal at a remote test site, is such that only a minimum of supervision is required.

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<sup>1/</sup> Although a single mailing address is required for record purposes, the CSO , may authorize a facility to use other addresses for the purpose of receiving classified material from parties with whom a classified contractual relationship exists or from other facilities of the organization where the contractor is a MFO, provided such other addresses are either post office box addresses or locations that are physically a part of the contractor's cleared facility. The CSO should authorize the foregoing only where the use of single address will pose a significant administrative problem for the contractor.

(4) It is management's desire that FCL's be aligned to conform to the contractor's organizational structure. In all instances, the CSO shall solicit the opinion of management before reaching a decision as to the number of FCL's that will be granted.

(5) However, in the event management objects to the decision of the CSO, the entire matter, including all supporting documentation, shall be referred by the CSO, to the Director, DIS, ATTN: Deputy Director (Industrial Security), HQ DIS for resolution.

e. Small business pools approved either in accordance with Section " 708 of the Defense Production Act of 1950, (reference (ee)) as amended, or in accordance with the Small Business Act, (reference (ff)), are eligible to negotiate or perform on classified contracts. If access to classified information is required for negotiation or performance on a contract, the pool itself, if awarded the contract, or the individual member acting for the pool, shall be processed for a FCL. In addition, other members of the pool shall be processed for FCL's as subcontractors if they will require access to classified information during negotiation or performance on a specific contract. A security procedure shall be developed in coordination between the contracting officer and the CSO's.

f. Temporary Help Supplier. A temporary help supplier is a subcontractor who dispatches personnel on his or her payroll to perform work on-the premises of the using contractor or UA in accordance with" the provisions of paragraphs 5ab, 41a, and 74, ISM.

(1) A temporary help supplier and its field, branch, or associate offices that have a valid parent subsidiary or multiple facility relationship are covered in paragraphs 72 and 73, ISM, respectively. The following paragraphs are concerned with:

(a) a temporary help supply grantor (hereinafter referred to as the grantor) who grants licenses to other individuals or firms to use the name, administrative support, method of operation or style of the grantor in a specific geographic area; and

(b) a licensee or franchise holder (hereinafter referred to as a licensee) that is owned and operated by a legal entity separate and distinct from the grantor, and is licensed or franchised to do business under the name, method of operation, or style of the grantor. .

(2) Where the temporary help personnel are actually employees of, and on the payroll of the licensee, the licensee may be granted a FCL as provided for in the ISM.

(3) Where the temporary help personnel are employees of, and on the payroll of the grantor, normally there would be no valid basis for the licensee to be granted a FCL. As an alternative, a FCL may be granted in the name of the grantor at the address of the licensee if there is a valid requirement for employees of the grantor to have access to classified information at a contractor facility or" UA activity, provided that:

(a) the grantor has a FCL at its HOF; and,

(b) an employee of the grantor, located on the premises of the licensee, is appointed as FSO for the grantor; or,

(c) an employer-employee relationship is established between the grantor and at least one or more employees of the licensee through execution of a separate written agreement between the parties or by insertion of a clause in the franchise or license agreement. The agreement or clause shall specifically provide that, for a consideration, one or more employees of the licensee will act as the FSO for the grantor in the territory covered by the license or franchise. One signed copy or certified true copy of the agreement or clause shall be furnished by the grantor to the CSO concerned.

(4) If the provisions of paragraphs (3) (a) and (b) or (3) (a) and (c) above are followed, a FCL may be granted to the grantor at the address of the licensee. This location will, for industrial security purposes, be considered as an operating facility of a MFO. Among other things, the SPP of the operating facility shall specify the functions and responsibilities of the FSO and the procedures for:

(a) processing PCL's including the granting of company CONFIDENTIAL clearances by the FSO;

(b) briefing and debriefing of the temporary help personnel in accordance with paragraph 5g, ISM -- although it is the responsibility of the temporary help supplier to have the "Security Briefing and Termination Statements (Industrial Personnel)" (DISCO Form 482) executed by the temporary help personnel, there is no objection if the using contractor also requires execution of the DISCO Form 482; and

(c) processing visit requests to the using contractors, which visits shall be considered as Category I visits as defined in paragraph 41a, ISM.

(5) In those rare cases wherein a licensee has license or franchise agreements with more than one grantor, a FCL may be issued in the name of each grantor. Similarly, if a contractor is engaged in a business which requires a FCL in connection with such business and, in addition, is a licensee for a temporary help supplier, a FCL may be issued in his or her own firm's name and another in the name of the grantor.

g. Commercial Carriers. A commercial carrier (see "Glossary of Terms," DoD 5220.22-C, reference (b)), is subject to Interstate Commerce Commission (ICC) and Civil Aeronautics Board (CAB) regulations or similar regulations of the state in which it operates. (In order to qualify for the shipment of SECRET material a commercial carrier must be approved by MTMC and granted a SECRET FCL by the CSO.)

h. Commercial Messenger Service. SECRET FCL's may be granted to contractors engaged in the intra-city (or local area) same-day delivery only of classified material between cleared contractors or between cleared contractors and a UA and/or the U.S. post office.

2-105 Consultants - General Requirements.

a. PCL and/or FCL requirements for self-employed consultants to UA activities and contractors shall be determined in accordance with paragraph 2-106, 2-107, and 2-108.

b. In all cases, self-employed consultants shall have a valid PCL issued in accordance with the **requirements** of the **ISM**. Consultants are not eligible for access to classified information outside the U. S., the Panama Canal Zone, and U.S. trust territories and possessions, unless in official travel status of not more than 90 days in any 12-month period. Consulting firms and Type B Consultants shall be processed for a FCL in accordance with paragraph 2-102.

2-106 Consultants, Type A. The consultant does not possess classified material except at the using contractor's cleared facility, on the premises of the UA activity, or **while** on authorized visits. All requirements of the ISM apply to the consultant who, for security administration purposes only, shall be considered to be an employee of the UA. A Type A Consultant to a temporary help supplier is prohibited unless used **solely** by the temporary help supplier. \*

a. The requirement for a separate FCL for the consultant (including the execution of the DD Form 441 and the DD Form 441s by the consultant), shall be waived, provided the using contractor or UA activity and the consultant jointly execute a certificate as follows.

(1) **Except** in connection with authorized visits: (i) classified material shall not be possessed by the consultant away from the activity of the using contractor or UA, (ii) the using contractor or UA shall not furnish classified material to the consultant at any other location than the premises of the using contractor or UA, (iii) performance of the consulting service by the consultant shall be accomplished at the activity of the using contractor or UA, and (iv) classification guidance will be provided by the using contractor or UA.

(2) The consultant shall not disclose classified information to unauthorized persons.

(3) The using contractor or UA shall brief the consultant as to the security controls and procedures applicable to the consultants performance.

b. One copy of such certificate shall be furnished by the using contractor to his or her CSO. In the case of a consultant to a UA activity, the certificate shall be retained by the Commander or Head of that activity.

c. The consultant shall complete the forms required by paragraph 26, ISM. These forms shall be submitted to DISCO through the UA activity or the contractor for which the consulting service is to be performed. Each application for FCL shall be accompanied by a copy of the certificate prescribed in paragraphs a(1) and (2) above. The LOC (DISCO Form 560) shall be issued to the using contractor or UA activity, as appropriate.

d. Failure to accomplish the certification described above shall require the processing of a FCL as prescribed by paragraph 2-102, above.

2-107 Consultants, Type B. The consultant possesses classified material at his or her place of business or residence, and has full responsibility for security of the classified material in accordance with the provisions of the ISM.

a. A FCL is required for the consultant to cover the premises at which he or she will possess the classified material and perform the consulting services.

b. Consultants of this type shall be considered to be prime contractors to the UA activity or subcontractors to the using contractor.

c. The provisions of this regulation pertaining to contractors or subcontractors, as appropriate, shall apply.

2-108 Consultants, Type C. Consultants possess classified material at or their regular employers' cleared facilities, the consultants and their employers having agreed as to their respective responsibilities for security of the classified material. The clearance status and safeguarding ability of the consultants' regular employers shall be obtained from the employers' CSO prior to the disclosure or release of classified information to the consultants.

a. No requirement exists for separate FCL for such as consultant (including execution of the DD Form 441 and the DD Form 441s for the consultant), or to have an existing FCL raised, provided the employing facility and the employee who is acting as consultant to another contractor or to a UA activity are both cleared for access to at least the category of classified information as that to which the consultant will require access, and provided further that the employing facility and the employee who is acting as a consultant jointly execute a letter agreement to safeguard classified information for an employee performing consultant services (see appendix I, paragraph U, ISM) by which the employing facility and the employee who is acting as a consultant agree:

(1) to place classified material which the consultant-employee must have in his or her possession under the employing facility's accountability system;

(2) to incorporate procedures in the employing facility's SPP which prohibit the dissemination of the classified material within the facility, except that appropriately cleared personnel of the facility may be designated in writing on a strict need-to-know basis, to provide the consulting employee clerical, destruction, and reproduction services necessary to his or her performance as a consultant;

(3) to furnish the employee who is acting as a consultant a storage container so that the classified material shall be stored under his or her control -- access to the storage container shall be limited to the employee who is acting as a consultant and the minimum number of employees designated in accordance with paragraph (2) above, which are essential to support the consultant; and

(4) to advise the CSO immediately upon any change in the consultant's status as an employee of the facility.

b. One copy **of** the letter agreement shall be furnished by the **employing** facility to its CSO, and one copy to the contractor or UA employing the consultant's services.

c. In the event it is necessary to raise the consultant's PCL to a higher level (not above that of the employing facility), the consultant shall complete the forms required by paragraph 26, ISM, and submit them through the **employing** facility to DISCO with a copy of the letter agreement prescribed in paragraph a above. (If required to be cleared to a higher level than **that** of the employing facility, the consultant shall be processed for a separate FCL pursuant to paragraph 2-107 of this part and be required to maintain a security program fully independent of that of his or her employer.)

2-109 Consultants to User Agencies Employed Under Civil Service Procedures.  
Security clearances for persons employed as consultants to UA's under civil service procedures normally will be issued under the separate regulations of the UA concerned. However, UA'S may process such a consultant for a PCL and/or FCL under the provisions of paragraphs 2-106, 2-107, or 2-108.

2-110 National Agency Check (NAC) (Facility).

a. A NAC of a facility shall include a check of the agencies indicated below:

(1) Federal Bureau of Investigation (FBI); .

(2) Defense Central Index of Investigations (DCII),  
Personnel Investigations Center, Baltimore, Maryland; and

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(3) other agencies as appropriate.

(4) For commercial carriers, a check shall also be made of the ICC for those carriers engaged in interstate surface transportation and the CAB for air carriers. State transportation regulatory bodies will be checked only when the carrier operates wholly within a state and is not part of interstate movement.

b. The CSO shall submit requests for NAC's to DISCO by letter and shall include the following identifying data concerning the facility:

(1) full name, street address, city, and state of facility'  
being cleared;

(2) full name, street address, city, and state of the parent,  
in the case of a subsidiary;

(3) any change in name or address of the facility being cleared which 'has occurred within the past 10 years; an-d

(4) names and positions of OODEPs who are required to be cleared as a part of the FCL.



2-111 Requirements for Facility Security Clearances and Annual Review.

The actions to be accomplished by the CSO prior to granting a FCL to a contractor are prescribed in paragraph 2-116. Also, with respect to commercial carriers, see the procedures set forth in section I, of part 7.

a. For a FCL the following actions shall be accomplished.

(1) Conduct a DD Form 374 survey. For commercial carriers part I of the "Industrial Security Survey/Inspection (Commercial Carrier)," DIS Form 1148, (see paragraph 9-206.1) will be completed in lieu of the DD Form 374.

(2) Execute for the DoD the DD Form 441 or "Appendage to Department of Defense Security Agreement" (DD Form 441-1) and the DD Form 441s with the facility. For commercial carriers, the DIS Form 1149 and the DIS Form 1150 (see annexes B and C of reference (b)) will be executed in lieu of the DD Forms 441 and 441-1. The Directors of Industrial Security are designated as the authorized representative of the government for signing the DD Forms 441 and 441-1 and the DIS Forms 1149 and 1150.

(3) Request DISCO to obtain a NAC on the facility.

(4) Request DISCO to process PCL's, as appropriate, in accordance with paragraph 2-113. The DISCO shall furnish the CSO the undated LOC's. The CSO shall date and issue these LOC's concurrently with the "Letter of Notification of a Facility Security Clearance" (DIS FL-381-R) to the facility. For commercial carrier facilities, a "Letter of Notification of Facility Security Clearance for a Commercial Carrier" (see annex D, reference (b)) shall be issued to the facility.

b. For an interim FCL the following shall be done.

(1) Conduct a DD Form 374 survey. For commercial carriers part I of DIS Form 1148 will be completed in lieu of the DD Form 374.

(2) Execute the DD Form 441 or 441-1 and the DD Form 441s with the facility. For commercial carriers, the DIS Forms 1149 and 1150 will be executed in lieu of the DD Form 441 or 441-1. The Directors of Industrial Security are designated as the authorized representatives of the U.S. Government for signing the DD Forms 441 and 441-1 and the DIS Forms 1149 and 1150.

(3) For an interim TOP SECRET FCL, request DISCO to obtain a NAC on the facility. For interim SECRET and interim CONFIDENTIAL FCL's, request DISCO to ascertain from information available in the investigative files of the DCII whether adverse information exists concerning the facility.

(4) The CSO will request DISCO to process PCL's, as appropriate, for the level of clearance required for the personnel required to be cleared by paragraph 2-113. When appropriate, individuals shall be processed for interim PCL's. The DISCO shall furnish the CSO the undated LOC. The CSO shall date and issue these LOC's concurrently with the DIS FL 361-R.

c. A NAC of a facility of a MFO is not required where the HOF of such an organization has had a NAC conducted with favorable results.

(Inasmuch as a subsidiary of a parent-subsubsidiary organization is a separate legal entity, this exception does not apply even though the parent has had a NAC conducted with favorable results.) Furthermore, a facility NAC (or check of the DCII in case of an interim SECRET or CONFIDENTIAL FCL) is not required when the name of the organization is the same as the name of one or more of the individuals who is being cleared in connection with the FCL. Similarly, a check is not required when the name under which the contractor is doing business has been adopted within the past 6 months. However, when there has been a recent change in the operating name of the business, a check should be requested on the former name or names under which the contractor or predecessor organization operated during the preceding 10 years, unless there has been a previous NAC conducted on the name.

d. FCL's shall not be granted by the CSO when any OODEP who is required to be cleared in connection with a FCL, as set forth in paragraph 2-113, is found to be ineligible for access to classified information under the standards and criteria established by the Industrial Personnel Security Clearance Program (see paragraph 2-121).

e. When a TOP SECRET FCL has been requested, the facility shall be granted a SECRET FCL as soon as the personnel who are required to be cleared pursuant to paragraph 2-113 are cleared at the SECRET level, provided of course, the facility is otherwise eligible for a SECRET FCL. (When a TOP SECRET PCL is requested for a U.S. citizen, DISCO automatically grants a SECRET PCL when the NAC is completed and supersedes this with a TOP SECRET PCL when the BI is completed.) Subsequently, when the required personnel are cleared for access to TOP SECRET material, a TOP SECRET PCL shall be granted.

f. A CSO may, at its discretion, elevate a requested CONFIDENTIAL FCL to the SECRET level if there is reason to believe that, because of the nature of the facility's business activity, there is a strong probability that the facility will have occasion to bid and/or perform on classified contracts at the SECRET level.

g. Prior to initiating any action to process a facility for a FCL, the CSO shall review the "Consolidated List of Debarred, Suspended, and Ineligible Contractors." Debarment and suspension actions, codes A and B, are considered pertinent from a security interest point of view. If so listed, the facility or OODEP would normally be ineligible for a security clearance. The CSO shall seek assistance from legal counsel before proceeding with further action.

h. FCL's shall not be granted by the CSO prior to the receipt of an adequate written SPP. An interim SPP is deemed to be adequate when it places into effect the requirements of the ISM which are immediately applicable to the operations of the facility in connection with the facility's anticipated involvement in the DoD Industrial Security Program.

i. Where a TOP SECRET FCL has been granted, the CSO shall review the facility on an annual basis to determine need for continuation of the clearance at the TOP SECRET level. Should there have been no possession of nor access elsewhere, and should there have been no bid, quote, or proposal submitted by the facility in response to a government procurement invitation during the preceding 3-year period which would have required contract performance at the

TOP SECRET level, the FCL shall be administratively downgraded to SECRET or CONFIDENTIAL, as appropriate. In the case of parent-subsidiary and MFO's, the prior coordination of the CSO's having an interest shall be obtained. In all cases, the following action shall be taken.

(1) Advise management of the facility in writing: (i) that the downgrading action does not reflect adversely upon the facility's security eligibility or ability to safeguard classified Information, (ii) that the security clearances of all OODEPs and employees cleared at the TOP SECRET level will be downgraded without prejudice to the appropriate level, and (iii) that the FCL's facility and PCL's may be upgraded to the TOP SECRET level when a requirement for such exists.

(2) Prepare a new DIS Form 553 with the statement added under remarks: "TOP SECRET facility security clearance granted (date) is administratively downgraded in accordance with paragraph 2-111, DoD 5220.22-R." Submit to DISCO with a copy to DTIC, if appropriate;

(3) Forward a new DIS FL 381-R to the facility as notification of the new level of FCL.

(4) On receipt of the DIS Form 553, DISCO will issue new LOC's reflecting the appropriate level of access for the OODEPs and the affected employees; and will request the facility to return to DISCO the previous LOC's and any copies thereof.

2-112 RESTRICTED DATA, Additional Facility Security Clearance Requirements. Where access to RESTRICTED DATA as defined in the Atomic Energy Act of 1954 (reference (o)), as amended, is required by any prospective bidder or contractor, the additional security clearance requirement as prescribed in paragraph 2-312 shall have been satisfied prior to authorizing access.

2-113 Personnel Required to be Cleared for a Facility Security Clearance.

a. Corporations, Associations, and Nonprofit Organizations. Except as provided for below, the following individuals are required to be cleared in connection with (and at the level of) the FCL.

(1) The chairman of the board and all principal officers (see paragraph 1-251) must be cleared.

(a) Other officers <sup>2/</sup> who do not require access to classified information in the conduct of the organization's business and who do not occupy positions that would enable them to affect adversely the

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<sup>2/</sup> All officers, as defined by paragraph 1-251, are considered OODEPs of an organization, but not all OODEPs occupy positions required to be cleared in connection with a FCL.

organization's policies or practices in the performance of classified contracts, are **not** required to be cleared, provided the organization complies with the provisions of paragraph g below.

(b) Other officers who require access to classified information in the conduct of the organization's business, but at a level less than that of the FCL, may be cleared with a U.S. Government granted clearance at the lower level, provided they do not occupy positions that would enable them to adversely affect the organization's policies and practices in the performance of the higher level classified contracts, and the organization complies with the provisions of paragraph g below.

(2) All directors must be cleared unless one of the following options is elected.

(a) Directors who shall not require access to classified information in the conduct of the organization's business and who do not occupy-positions that would enable them to affect adversely the organization's policies or practices in the performance of classified contracts are not required to be cleared, provided: at least a legal quorum of the board of directors or similar executive body shall be cleared, and, if the corporation or association conducts meetings with a pro tem chairman or by a rotating chairmanship, all board members who are eligible for or could sit as board chairman shall be cleared, and with respect to all uncleared directors, the organization complies with the provisions of paragraph g below.

(b) If the board has seen fit to delegate certain of its duties and responsibilities to a legally constituted executive committee, all members of this committee shall be cleared. Other directors are not required to be cleared, provided the committee has full executive authority to exercise management control and supervision for the corporation, including responsibility over all matters involving the security of classified information in the possession of the organization and provided further, with respect to all uncleared directors, the organization complies with the provisions of paragraph g below. Directors who are not members of this executive committee may be cleared, but only at the same level as the FCL and when this is done paragraph g below is not applicable in their case. Two copies of the board of directors' or similar executive body's resolution, excluding the board members from access to classified information and delegating this authority to the committee, shall be furnished to the CSO.

(3) Executive personnel must be cleared. The management official in charge at the facility and the FSO shall always be cleared in connection with the FCL.

(4) A current list of all OODEPs shall be maintained by the corporation and the CSO. The list shall designate by name those individuals granted a LOC, those who are being processed for a PCL, and those who have been excluded from access to classified information pursuant to the provisions of paragraph g below. Such lists shall be signed by an OODEP of the corporation.

b. Sole Proprietorships. The following Individuals are required to be cleared in connection with (and at the level of) the FCL:

(1) the owner;

(2) all officers, if applicable; and

(3) executive personnel (see paragraph 1-228). The management official in charge at the facility and the FSO shall always be cleared in connection with the FCL.

(4) A current list of all OODEPs shall be maintained by the sole proprietorship and the CSO. The list shall designate by name those individuals granted a LOC, those who are being processed for a PCL, and those who have been excluded from access to classified information pursuant to the provisions of paragraph g below. Such lists shall be signed by an OODEP of the sole proprietorship.

c. Partnerships. Except as provided for below, the following individuals are required to be cleared in connection with (and at the level of) the FCL.

(1) All general partners must be cleared.

(2) All other partners must be cleared.

(a) Partners other than general partners, who do not require access to classified information in the conduct of the organization's business and do not occupy positions that would enable them to affect adversely the organization's policies or practices in the performance of classified contracts are not required to be cleared, provided the organization by official action of the general partners complies with the provisions of paragraph g below.

(b) Partners other than general partners who require access to classified information in the conduct of the organization's business, but at a level less than that of the FCL, may be cleared with a U.S. Government granted clearance at the lower level, provided they do not occupy positions that would enable them to adversely affect the organization's policies and practices in the performance of the higher level classified contracts, and the organization by official action of the general partners complies with the provisions of paragraph g below.

(3) If the partnership has seen fit to delegate certain of its duties and responsibilities to a legally constituted executive committee, all members of this committee shall be cleared in connection with the FCL. General partners who are not members of this executive committee may be cleared, but only at the same level as the FCL. Nonexecutive committee member general partners may be excluded, provided the committee has full executive authority to exercise management control and supervision for the organization, and with respect to these other partners, the organization complies with the provisions of paragraph g below. Two copies of the partnership's resolution delegating this authority to the committee shall be furnished to the CSO. The resolution shall specify those partners excluded

from access to classified information and those partners excluded from access to the higher level classified information, as appropriate..

(4) For executive personnel, the management official in charge of the facility and the FSO shall always be cleared in connection with the FCL.

(5) A current list of all OODEPs shall be maintained by the partnership and the CSO. The list shall designate by name those individual granted a LUC, those who are being processed for a PCL, and those who have been excluded from access to classified information pursuant to the provisions of paragraph g below. Such lists shall be signed by a partner or an executive of the partnership.

d. Colleges' and Universities. Except as provided for below, the following individuals are required to be cleared in connection with (and at the level of) the FCL.

(1) The chief executive officer must be cleared.

(2) Those other officers or officials who are specifically and properly designated by action of the board of regents, board of trustees, board of directors, or similar type executive body must be cleared, in accordance with the institution's requirement as the managerial group having the authority and responsibility for the negotiation, execution, and administration of UA contracts. The institution shall furnish the CSO a copy of such designation of authority, from which the particular officers who are to be processed in connection with a FCL can be determined, and thereafter changes shall be furnished as they occur. If this requirement is not met, all officers shall be processed for a PCL in connection with the FCL.

(3) All regents, trustees, or directors must be cleared, unless one of the following options is elected.

(a) Regents, trustees, or directors who shall not require access to classified information in the conduct of the organization's business, and who do not occupy positions that would enable them to affect adversely the organization's policies or practices in the performance of classified contracts, are not required to be cleared, provided that at least a legal quorum of the board of regents, board of trustees, board of directors, or, similar executive body shall be cleared and, if the college or university conducts meetings with a pro tern chairman or by a rotating chairmanship, all board members who are eligible for or could sit as board chairman shall be cleared; and with respect to all uncleared regents, trustees, or directors, the organization complies with the provisions of paragraph g below.

(b) If the board has seen fit to delegate certain of its duties and responsibilities to a legally constituted executive committee, all members of this committee shall be cleared. Other regents, trustees, or directors are not required to be cleared, provided the committee has full executive-authority to exercise management control and supervision for the organization, including responsibility over all matters involving the security of classified information in the possession of the organization and provided

further, with respect to all uncleared regents, trustees, or directors, the organization complies with the provisions of paragraph g below. Regents, trustees, or directors who are not members of this executive committee may be cleared, but only at the same level as the FCL, and when this is done paragraph g below is not applicable in their case. Two copies of the board of director's or similar executive body's resolution delegating this authority to the committee shall be furnished to the CSO.

(c) If the board has seen fit to delegate certain of its duties and responsibilities pertaining to the protection of classified information to a managerial group of officers or officials of the college or university, and if because of this delegation the board will not be in a position to affect adversely the performance of classified contracts, the board may exclude itself from the requirement for its members to be processed for a PCL by complying with the provisions of paragraph g below. Election of this alternative will not preclude a regent, trustee, or director from being processed for a PCL if such clearance is necessary in connection with the individual's duties other than in the capacity of a regent, trustee, or director. However, in such cases the PCL shall be at the same level as the FCL. Two copies of the board of regents', board of trustees', board of directors', or similar executive body's resolutions excluding the board members from access to classified information and delegating this authority to the managerial group shall be furnished to the CSO.

(4) For executive personnel, the management official in charge of the facility and the FSO shall always be cleared in connection with the FCL.

(5) A list of all OODEPs shall be maintained by the college or university and the CSO. The list shall designate by name those individuals granted a LOC, those who are being processed for PCL's, and those who have been excluded from access to classified information pursuant to the provisions of paragraph g below. Such lists shall be signed by an OODEP of the college or university.

e. Commercial Carriers.

(1) The procedures set forth in paragraphs a, b, and c above are equally applicable to commercial carriers which are corporations, associations, sole proprietorships, or partnerships.

(2) The terminal manager and the FSO are required to be issued a PCL in connection, with the FCL of a carrier terminal listed on the DIS Form 1150.

(3) Concurrent with, but not as a part of the FCL, a sufficient number of carrier custodians consistent with estimated operational necessity will be issued a PCL in the same manner as negotiators (see paragraph 2-115) to provide adequate protection of SECRET controlled shipments at each terminal listed on the DIS Form 1150. Additional carrier custodians will be processed for clearance after the FCL is granted based on operational requirements in the manner prescribed in paragraph 26, LSM.

f. Eligibility Determinations. Individuals who, as determined by the CSO, are not OODEPs yet exercise control over the management of the facility shall be processed for a determination of clearance eligibility to the

level of the FCL. Such individuals shall be processed, if, through stock ownership, proxy voting rights, majority ownership of securities, or some other method, they control the management of the facility and affect the appointment and tenure of officers, directors, or principal supervisory management personnel of the facility. A favorable determination of eligibility by DISC() will be entered into the PSCF. A LCJC will not be issued to the contractor. If DISCO cannot make a favorable determination, DISCO will follow the procedures in paragraph 2-320. A FCL will not be issued until the matter is resolved.

g. Exclusion Procedures. This paragraph applies to those officers, directors, partners, regents, and trustees who, pursuant to the provisions set forth above, can be excluded altogether from the requirement for a PCL or who can be excluded from higher level access by virtue of possessing a PCL at a level below that of the FCL. In order to invoke these exclusion procedures, the organization by formal action of the board of directors, all general partners, or similar executive body shall affirm, as appropriate, the following,

(1) Such officers, directors, partners, regents, or trustees (designated by name) shall not require, shall not have, and can be effectively excluded from, access to all classified information in the possession of the organization and do not occupy positions that would enable them to affect adversely the organization's policies or practices in the performance of classified contracts or programs for the UA's. This action shall be made a matter of record in the organization's minutes of the board of directors, partnership, board of regents, or trustees, or similar executive body. Two copies of such minutes, dated and identified by the name and address of the facility, shall be furnished to the CSO.

(2) Such officers or partners (designated by name) shall not require, shall not have, can be effectively denied access to classified information at the higher level (specify higher level(s)), and do not occupy positions that would enable them to affect adversely the organization's policies or practices in the performance of the higher level (specify higher level(s)) classified contracts or programs for the UA's. This action shall be made a matter of record in the organization's minutes of the board of directors, partnership, board of regents, or trustees, or similar executive body. Two copies of such minutes, dated and identified by the name and address of the facility, shall be furnished to the CSO.

(3) In the event the organization does not comply with one or both of the above, as applicable, all officers, directors, partners, regents, or trustees shall be processed for a PCL at the level of the FCL.

h. Representative of a Foreign Interest. When a RFI (see paragraph 1-256) is required to be cleared in connection with a FCL, and the RFI has not been excluded in accordance with paragraph g above, the following procedures shall apply.

(1) When the statement required by paragraph 20k, ISM, has been executed, official notice of execution shall be made a matter of record in the organization's minutes by the board of directors or similar executive body. Two copies of the minutes shall be furnished the CSO.



(2) "Failure to obtain a PCL for, or to exclude, a RFI shall make the facility ineligible for clearance, and any existing clearance shall be administratively terminated by the CSO. Such action is not appealable.

(3) In those cases where an individual, who is cleared in connection with the FCL, becomes a RFI, the contractor shall submit the report required by paragraph 6a(4), ISM, and in addition shall take the actions prescribed in this paragraph.

i. One copy of each resolution, statement, or certificate received by a CSO, in accordance with paragraphs a through g above, shall be forwarded to DISCO.

2-114 Foreign Nationals Serving as Officers, Partners, or Members of Boards of Directors. Corporations, associations, colleges, universities, partnerships, or other entities which have foreign nationals serving as partners, officers (other than principal officers of corporations and associations), or members of the board of directors may be issued a FCL by the CSO if they are otherwise eligible and are found not to be under FOCI, as set forth in paragraph 2-201, provided that the following conditions are met.

a. The partner, officer, or director who is a foreign national does not occupy a position that would enable him or her to affect adversely the facility's policies or practices in the performance of contracts for the UA's.

b. The partner, officer or director who is a foreign national can effectively be denied access to all classified information.

c. The exclusion from access to classified information of a partner, officer, or director shall be accomplished in the manner prescribed in paragraph 2-113g. Two copies of such minutes identified by name, address, and date of submission shall be obtained by the CSO.

d. In case the organization does not comply with this requirement, it shall be ineligible for a FCL.

e. The foregoing provisions of this paragraph do not apply to partners, officers, or directors who are citizens of countries with which the U.S. entered formal reciprocal arrangements, and who have been granted a reciprocal clearance in accordance with paragraph 2-323. In addition, the access limitations which apply under paragraphs 2-117a(1) through (7) of this part shall also apply to foreign nationals granted a reciprocal clearance even though employed by a U.S. firm which is not under a reciprocal FCL. A citizen of one of these countries who is chairman of the board of directors as well as a principal officer (that is, a position which pursuant to paragraph 2-113 requires that the individual be cleared as part of the FCL of a U.S. firm) shall be eligible for a reciprocal clearance (paragraph 2-323); however, the access limitations in paragraphs 2-117a(1) through (7) shall be applied to the facility. DIS Form 553 and FL 381-R, and DISCO Form 560 will all be annotated to reflect the access limitations of paragraphs 2-117a(1) through (7) and 31c(1)(a) through (g), ISM, as appropriate. UA's prior to any release of classified information to facilities cleared, in accordance with the above, will ascertain that the classified information to be released has been approved for release by an official who has been

delegated disclosure authority by the NDP-1 (reference (r)) and-agency implementation.

2-115 Clearance of Negotiators. Negotiators designated by the contractor as being required to participate in the preparation of a bid or quotation may be processed for PCL's concurrently with, but not as a part of, the FCL. A FCL is not dependent upon the clearance of negotiators and changes in negotiators shall not affect the status of a FCL. PCL's for negotiators shall not be granted prior to the FCL. Subsequent to the granting of a FCL, negotiators are processed for PCL's in the normal reamer prescribed by paragraph 26, ISM.

2-116 Procedures for Processing a Facility Security Clearance. Basic procedural steps necessary in processing a FCL are as set forth below 3/.

a. Justification for a Facility Security Clearance. Requests to process a contractor for a FCL are originated by a UA or by a cleared contractor or subcontractor thereof. Requests must be based on a bona fide procurement requirement for a contractor to have access to, or possession of, classified information in connection with: all aspects of precontract activity, including preparation of bids and proposals and precontract negotiations; the performance of a classified contract; all aspects of postcontract activity; and classified information not released or disclosed under a procurement contract, such as classified information released pursuant to a UA program participated in by a firm, organization, or individual on a voluntary or grant basis (for example, the long-range scientific and technical planning programs and programs designed to provide planning briefings for industry) 4/. It is U.S. Government policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors 5/; thus assisting small business and labor surplus area contractors and broadening industry participation in DoD procurement programs. This policy is stated in the Federal Acquisition Regulation (reference (gg)), paragraph 5.001, and in the DAR (reference (c)), paragraph 5.001. Therefore, the requesting UA or cleared contractor, shall allow sufficient lead time in connection with the award of a classified prime or subcontract so the necessary FCL may be processed for a prospective contractor who does not currently possess a valid FCL. When the necessary processing cannot be accomplished within the time limits to qualify the prospective contractor for participation in the particular procurement action which gave rise to the

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3/ In connection with the upgrading of a FCL the same steps, where appropriate, apply.

4/ Normally the facility will be processed for clearance at the classification level of the contract or program which gave rise to the request. However, where the underlying contract or program is at the CONFIDENTIAL level and the CSO determines that there is a reasonable likelihood the facility will require a SECRET FCL in the foreseeable future, the facility may be processed at the SECRET level.

5/ This includes contractors who will require visual and/or aural access in connection with work performed on a military installation.

request, the UA or prime contractor shall request the CSO to continue the clearance action in order to qualify the prospective contractor for future classified contract negotiations of a similar nature, provided:

(1) the delay in processing the FCL was not occasioned by a lack of cooperation on the part of the prospective contractor; and

(2) the UA or prime contractor is of the opinion that there is reasonable likelihood that the-prospective contractor will-participate in future classified contract negotiations and the contractor agrees to such participation.

b. Assumption of Security Cognizance. The CSO which has assumed cognizance shall forward a letter to the facility advising of such action and arrange a date for a security specialist to visit the facility. The CSO also shall submit an abbreviated (pending) "Central Index File Card-Facility" (DIS Form 553) to DISCO.

c. Initial Visit of Security Specialist. The initial visit. to the facility shall be made within 10 calendar days after receipt of the request to process the contractor for a FCL. Exceptions may be granted for unusual cases at the discretion of the Regional Director, with the concurrence of the requester. However, action to initiate the clearance process, to include forwarding of applicable forms to the contractor, will be accomplished within 15 working days in these exceptional cases. When making the initial visit, the security specialist shall inform management concerning the DoD Industrial Security Program and furnish management the forms necessary for a FCL. The security specialist shall advise management of the facility of its responsibilities under the DD Form 441. This discussion shall include, but not necessarily be limited to:

- (1) the definition of a classified contract;
- (2) government responsibility for classification, and the contractor's source of guidance and clarification of classification instructions;
- (3) the role of the CSO;
- (4) the government's right of security inspections;
- (5) responsibility for security costs;
- (6) security responsibilities of the contractor if he or she awards or obtains a classified subcontract;
- (7) special security requirements that may be included in a contract;
- (8) the requirements, on completion of a contract, for destroying or returning all classified material provided or generated in connection with that contract;
- (9) the general policy concerning FOCI, and the requirement to execute the DD Form 441s;

(10) the requirement for the clearance of OODEPs in connection with the FCL - also provide guidance and advice to management in identifying the facility personnel who must be cleared in connection with the FCL;

(11) provisions for terminating the DD Form 441;;

(12) procedures for contractor-granted CONFIDENTIAL clearances;

(13) industrial security education;

(14) classified visit procedures;

(15) the importance of the SPP;

(16) the requirement for obtaining authorization for the establishment of any restricted or closed area;

(17) minimum storage requirements; and

(18) the general subject of PCL's. In this regard, explain that only personnel who have been granted-a PCL are eligible for access to classified material and discuss the need-to-know principle. Point out the necessity for limiting the number of cleared personnel to only those required to perform tasks and services essential to the fulfillment of a contract or program. Instruct management on the preparation of personnel security forms and fingerprint cards and the procedures for submitting clearance requests. In the event an interim FCL has been requested, explain the need for the contractor to take immediate action to obtain clearances for those employees who will require access to classified information in order to perform on the contract which was the basis for requesting the interim clearance.

d. The security specialist shall conduct the DD Form 374 survey for the purpose of evaluating the ability of the facility to safeguard classified information of the same category as that of the FCL being processed and to determine the degree of FOCI, if any. Full completion of the DD Form 374 shall be accomplished as expeditiously as possible. In this connection the contractor shall be advised that any delay on his or her part in the execution and submission of the necessary forms, including the submission of PCL requests for those personnel who are required to be cleared in connection with the FCL, will delay the granting of the FCL.

e. Security Agreement and Related Forms.

(1) DD Form 441. The DD Form 441, "Department of Defense Security Agreement," is entered into between a contractor who will have access to classified information, and the DoD in order to preserve and maintain the security of the U.S. through the prevention of unauthorized disclosure of classified information. Requests for modifications to the security agreement shall be submitted through channels to the DUSD(P), ATTN: DSP&P. The security agreement once executed shall continue in effect until terminated by action of either party thereto in accordance with the "Article on Termination" contained in section IV of the agreement. The CSO shall execute the DD Form

441 on behalf of the DoD prior to granting a FCL, and an authorized official shall execute the agreement on behalf of the contractor.

(2) DD Form 441-1. At the option of management of a MFO, a DD Form 441-1, "Appendage to Department of Defense Security Agreement," may be incorporated in the DD Form 441, identifying by name and location each of the various facilities of the contractor to be covered by the agreement. Separate security agreements will not be necessary to cover the facilities enumerated in the appendage. On agreement between management and the CSO, additional facilities may be added or deleted from the original security agreement by using DD Form 441-1. When the HOF of a MFO submits a new DD Form 441, it is not necessary to obtain new DD Form 441-1 for other facilities of the MFO. The existing DD Forms 441-1 may be attached to the new DD Form 441 by a letter indicating the date of change. The contractor is responsible for furnishing a copy of the security agreement, with appendage, to each individual facility listed thereon and to each concerned CSO. This paragraph shall not be construed to preclude the requirement for the accomplishment of all other FCL actions prescribed by this regulation.

(3) DD Form 441s. Simultaneously with the execution of the DD Form 441, management of the facility being processed for a FCL shall be required to execute the DD Form 441s, "Certificate Pertaining to Foreign Interests." The DD Form 441s executed by the HOF of a MFO will encompass all operating facilities of the organization. At least annually, inspectors should make an inquiry as to the accuracy and currency of the information reflected on the existing DD Form 441s, particularly if no changes had been reported to the CSO during the preceding year, in accordance with paragraph 6a(4)(f), ISM. The execution of this form shall be required for all companies being processed for a FCL <sup>6/</sup>, and for uncleared parent organizations of cleared subsidiaries (see paragraph 2-104b). However, the CSO may require the accomplishment at an earlier time when some question pertaining to FOCI arises and the CSO believes that the execution of this form is in the best interest of the DoD.

i. Review of DD Form 441s. The factors to be used in determining the existence of FOCI are set forth in paragraph 2-202. If any of these factors are present in a facility being processed for a FCL, the CSO shall proceed in accordance with paragraph 2-203.

g. Documents to be Forwarded to DISCO. When the CSO has received all PCL applications necessary for a FCL, each form shall be conspicuously stamped OODEP. The PCL applications for the OODEPs and the request for the facility NAC shall be forwarded to DISCO. Submission of the facility NAC request shall not be delayed pending receipt of OODEP clearance applications. If one or more of the OODEPs is temporarily unavailable to complete the necessary forms, the submission of the clearance application for the other OODEPs and the request for the facility NAC shall not be delayed.

h. Follow-up Action.

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<sup>6/</sup> DD Form 441s is not required for each facility of a MFO.

(1) If the necessary clearance documents are not received within 15 calendar days after the initial visit, the CSO shall make an informal inquiry. If the forms are not received within 30 calendar days after the initial visit, a written inquiry shall be sent to the contractor advising that processing of the FCL will be discontinued unless the forms or an adequate explanation are received within 10 calendar days. A copy of the letter of inquiry shall be furnished to the activity which requested the FCL. If the necessary forms are not received from the contractor within 45 days after the initial visit and the contractor cannot justify a time extension, processing of the FCL shall be discontinued and the activity which requested the clearance action shall be so advised. The 15-, 30-, 45-day time span follow-up applies equally to those cases being processed as a result of changed conditions. (If a visit is not made, the time span commences from the date the facility is notified to furnish the necessary clearance documents.) When reprocessing a FCL and the contractor fails to submit the required forms within the time span indicated, the CSO shall notify the contractor in writing: (i) that the contractor's safeguarding ability will not be confirmed to any requesting contracting activity, and (ii) that his or her failure to submit the forms requested by the CSO is a violation of paragraphs 21a and 26a, ISM, as applicable.

(2) If the facility being processed is a subsidiary or a facility of a MFO, the FCL of the parent or the HOF shall be checked by the CSO to ensure that the FCL of the parent or HOF is valid and of the appropriate classification level. This check shall be made with the CSO of the parent or HOF.

(3) The CSO shall follow up with DISCO if OODEP clearances or results of a facility NAC are not received within a reasonable period of time.

1. Final Actions. The CSO shall ensure that all forms have been properly completed, facility NAC has been satisfactorily completed, and that clearances have been received from DISCO for those persons required to be cleared in connection with the FCL or that exclusion statements are held. The CSO shall execute and distribute those forms not previously distributed to the facility. The requesting UA or prime contractor shall be advised that the FCL has been granted.

j. DoD Technical Information Dissemination Activities.

(1) "Facility Clearance Register" (DD Form 1541) shall be used for the certification of FCL and safeguarding ability. When a contractor has an initial requirement to receive classified material from the DTIC; its field extensions; a DoD Information Analysis Center; or the Redstone Scientific Information Center, U.S. Army Missile Command, Redstone Arsenal, Alabama; the contractor shall submit a DD Form 1541 directly to the CSO. Resubmission of the DD Form 1541 by the contractor to meet subsequent requirements for services on other contracts is not required. The CSO will complete part II of the DD Form 1541 and forward the form to: DTIC, Cameron Station, Alexandria, Virginia 22314. Thereafter DTIC shall advise its field extensions, the DoD Information Analysis Centers, and the Redstone Scientific Information Center of the clearance and safeguarding ability of using contractors as required. The CSO shall indicate in the facility file that the FCL and safeguarding ability have been certified to DTIC. If there are any subsequently changed

conditions affecting the FCL or safeguarding ability, the DTIC shall be notified immediately. Such notification will be submitted by a copy of the DIS Form 553. Whenever the nature of the changed condition may not be readily apparent to DTIC from the copy of the DIS Form 553, the CSO shall include an appropriate notation under "Remarks" on the DIS Form 553, stating precisely the condition that affects the contractor's eligibility for the service. Such notifications shall always be included when the facility's safeguarding ability has changed. Once a DD Form 1541 has been certified by the CSO, it shall remain in force for all subsequent requests for "Registration for Scientific and Technical Information Semites" (DD Form 1540) and need not be recertified except where there has been a change in facility conditions which require recertification by the CSO.

(2) The DD Form 1540 is used to certify the contractor's need-to-know for information distributed by DoD technical information documentation activities. In addition to the DD Form 1541, the contractor's need-to-know information within specified DoD interests must be determined in order to establish the contractor's eligibility for classified, services. This need-to-know decision is made by the PCO (pursuant to DoD Instruction 5200.21, reference (hh), and the UA implementing instructions) on the basis that information in a particular field of interest is needed by the contractor in connection with work being performed under the contract. Separate DD Forms 1540 are required for each contract under which the contractor desires to receive secondary distribution of scientific and technical information services within particular fields of interest. The DD Form 1540 is then submitted directly to the contracting officer for approval. In the case of a prime contract, the DD Form 1540 must be approved by the PCO. In the case of the subcontract the DD Form 1540 may be approved by the ACO, provided the ACO verifies that the particular field of interest is required in the performance of the subcontract and is within the scope of the field of interest previously approved by the PCO on the prime contract. The PCO will provide a copy of the approved DD Form 1540 to the ACO when required. If no field of interest has been established on the prime contract, the subcontractor's request must be certified by the PCO. Approved DD Forms 1540 are sent to DTIC. When DTIC receives the DD Form 1540, it will determine that there is a DD Form 1541 on file and thereafter establish the contractor's eligibility to receive scientific and technical information. Eligibility established on a DD Form 1540 remains in effect for the expected duration of the contract as established by the projected completion date supplied on the DD Form 1540, except where DTIC is notified by the ACO that the contract has been terminated or that the contractor's eligibility has been canceled based on advice from the CSO that the contractor is no longer capable of adequately safeguarding classified information. Prime and subcontractors may not retain such classified material following the completion or termination of the classified contract, except when authorized in accordance with paragraph 7-106.

(3) Facilities granted a Reciprocal facility security clearance by the cognizant security office are to be processed for eligibility for access to DoD classified technical information in the same manner as outlined in (1) and (2) above. Once eligibility has been established at DTIC, and subsequent document requests are properly received, DTIC shall release the requested documentation directly to the contracting officer who certified the contractor's need-to-know on the applicable DD Form 1540.

Under no circumstances will classified material be transmitted directly to reciprocal cleared facilities by the DTIC. It is the responsibility of the contracting officer to effect appropriate coordination to ensure that pertinent documents do not contain prescribed information (see paragraph 2-117a) and that they have been approved for release under the National Disclosure Policy prior to forwarding the material or otherwise providing the Reciprocal cleared facility access to the information requested.

2-117 Facility Security Assurances.

a. The DoD has entered into bilateral reciprocal industrial security agreements with certain foreign governments. Under these bilateral agreements, a firm in one signatory country which is under the ownership, control, or influence in the other signatory country may be given a security assurance in accordance with the procedures established in these agreements. As an exception, contracts which involve the following types of classified information shall not be awarded to a U.S. firm cleared under these agreements for access to U.S. classified information:

(1) RESTRICTED DATA as defined in the U.S. Atomic Energy Act of 1954, reference (o), as amended;

(2) FORMERLY RESTRICTED DATA removed from the RESTRICTED DATA category pursuant to Section 142(d) of reference (o), as amended;

(3) Canadian "Classified Atomic Energy Data" as defined in the Atomic Energy Control Act (revised Statutes of Canada, 1952) and the Atomic Energy Control Regulations, Order-in-Council PC, 1959-1643;

(4) COMSEC information (see paragraph 7-102g);

(5) any ACDA classified information;

(6) information for which foreign dissemination has been prohibited in whole or in part;

(7) information for which a special access authorization is required; and,

(8) any information which has not been specifically authorized for release to the government of the signatory country involved.

b. The DIS, or the designated agency of the signatory foreign government entering into the reciprocal industrial security agreement with the DoD, when requested to furnish a security assurance for a firm to the other government, will assume responsibility for processing the clearance action. The standards and requirements governing the granting of security clearances for the protection of its own classified information will be followed. If the firm does not have a FCL or has a FCL for a classification category lower than that which is requested, action shall be taken to grant, a FCL or to raise a FCL to the required level.



c. The DIS shall accept a security assurance regarding a firm located in a signatory country under a reciprocal 'industrial security agreement which it requested from the designated foreign government agency. Likewise, the designated foreign government agency shall accept a security assurance which it requested from DIS. However, any clearance of a firm based on a security assurance which has been given under the procedures in this paragraph is subject to review by the government which granted the FCL in the event that derogatory information is developed following clearance action. Such a review will also be made when requested by the government which asked for the security assurance. The requesting U.S. activity, or designated foreign government agency, will be notified promptly of suspension of the FCL or of action to revoke or terminate it.

d. Except as otherwise stated in this paragraph, the requirements of this regulation shall be followed by the CSO in granting a FCL or raising one to the level required. If the CSO develops credible information at any time during the clearance process which indicates that the firm is not eligible for or should be denied clearance, the pertinent facts will be

reported promptly to DISCO. Similarly, if DISCO develops serious derogatory information in connection with processing the PCL on any of the individuals required to be cleared in connection with the FCL pursuant to paragraph 2-113, appropriate documentation will be prepared. In either event, DISCO will request the Director for Industrial Security Clearance Review (DISCR), Office of the General Counsel (OGC), OSD (a copy of the complete correspondence will be forwarded to the HQ DIS) to determine whether the clearance action should be continued and what notification, if any, should be given the designated foreign government agency requesting the assurance, and whether action to deny a FCL shall be processed under the provisions of paragraph 2-121.

e. When favorable clearance action has been completed, the CSO shall record the clearance in the PSCF by submitting the original completed DIS Form 553. A copy of the DIS Form 553 will be forwarded direct to DISCO for use in giving a security assurance. A modified DIS FL 381-R shall be used by the CSO to notify the facility of such clearance and its purpose.

2-118 Changed Conditions Pertaining to the Facility. When changed conditions occur in the facility, the first consideration shall be the safeguarding of classified information to which the facility has current or impending access. Action to ensure the safeguarding of the classified information shall be taken immediately upon an initial determination that conditions have changed. FCL's should not be immediately invalidated because of changed conditions described in paragraph a, b, or c below, when: (i) the facility is currently performing on classified contracts, is in possession of classified information, or both; (ii) the CSO determines that classified information in possession of the facility can be safeguarded adequately and, in the case of a change of ownership or management, that the new owners, officers, and so on, can and will be effectively denied access to classified information pending completion of their PCL actions; and (iii) the required PCL or FCL forms are promptly submitted for processing. (Unless the new personnel are expected to be cleared within 15 days, an exclusion certificate, similar to that required by paragraph 2-113g, signed by a cleared owner, partner, officer, or executive personnel in charge of a facility, shall be obtained as assurance of the contractor's intent to deny access to uncleared owners, officers, and the like.) Observance of these guidelines will lessen administrative workload of the CSO and reduce to a minimum the occasion when it is necessary to invalidate a FCL. In all instances where the changed condition affects the clearance or safeguarding capability of a facility that has been certified to DTIC for classified services, a copy of the DIS Form 553 which is submitted to DISCO shall also be sent to DTIC.

a. Change of Operating Name.

(1) In the instances of changes in the operating name of the facility when ownership and management remain the same, the FCL shall be processed promptly to a valid status if the facility has a current procurement requirement for access to classified information or has classified information in its possession.

(2) If the facility does not have current access to classified information, and does not have possession of classified information, the clearance need not be processed to a valid status. However, a DIS Form 553,

appropriately annotated to reflect the defective FCL and the reason for it, shall be placed in the files of the CSO and DISCO. If appropriate, action shall be initiated under paragraph 2-119 for administrative termination of the FCL.

(3) If the FCL is to be processed to a valid status the following actions shall be completed.

(a) A new DD Form 441 shall be executed.

(b) A DIS FL 381-R shall be issued.

(c) A DIS Form 553 shall be submitted under the new operating name to DISCO, indicating in item 11 the specific reasons for such submission and noting the administrative termination of the FCL under the old operating name. The CSO shall forward a pending DIS Form 553 reflecting the new name of the facility immediately following receipt of a report of a name change. Include in block 11 of the form a cross reference to the existing DIS Form 553 (including prior editions of this form) in PSCF and the specific reason for submission. This will permit DISCO to accept and process PCL's for the facility pending receipt of the DIS Form 553 to be submitted when all actions to process the FCL to a valid status have been completed. Of course, if it is possible to do so, a complete DIS Form 553 should be sent at once to DISCO instead of a pending DIS Form 553. In addition, DTIC shall be notified as required by paragraph 2-116j.

b. Changes in Ownership or Management.

(1) In instances of changes of OODEPs, the FCL must be processed promptly to a valid status, provided the facility has a current procurement requirement for access to classified information or has classified information in its possession. Classified information shall not be furnished to nor shall retention by the facility be permitted unless the CSO can assure itself that classified information can be safeguarded and that the new owners or management shall not obtain access to the classified information while their clearances are being processed. The CSO shall make this assurance on the basis of a visit to, or communication with, the facility and a discussion with the new owner or management and the FSO as to the procedures that will be put into effect. When the change in management occurs because a cleared employee is elevated to the position of an OODEP, the CSO shall advise DISCO and DISCO will amend the DISCO Form 560 for the individual to reflect the change.

(2) If the facility does not have a procurement requirement for access to classified information and does not have any classified information in its possession, the FCL shall be invalidated. A DIS Form 553, appropriately annotated to reflect the invalidation and the reasons for it, shall be placed in the files of the CSO with the original forwarded to the DISCO. If appropriate, action shall be initiated under paragraph 2-119 for administrative termination of the FCL.

(3) If the FCL is to be processed to a valid status, the following actions shall be completed.

(a) Clearance action for the new personnel shall be started promptly for clearance to the level of the FCL. (A certificate specifically excluding such personnel by name and title from access to classified information until such time as they are appropriately cleared shall be obtained from the contractor for retention in the files of the CSO.)

(b) In the case of a sole proprietorship or a partnership, a new DD Form 441 shall be executed and a new DIS FL 381-R shall be issued.

(c) In all cases involving a change of ownership, a new DD Form 374 survey shall be completed, to include execution of a new DD Form 441s. The new owner or management will be advised of the need to promptly forward the required PCL and FCL forms to the CSO. The CSO shall determine whether a new certificate is required in connection with changes in officers, directors, partners, regents, trustees, or executive personnel.

(d) On completion of the above actions, a new DIS Form 553 shall be submitted, indicating in item 11 the specific reasons for such submission.

c. Change of Address.

(1) in instances in which a facility is relocated, if the facility has current procurement requirement for access to classified information or has classified information in its possession, the FCL shall be processed to a valid status.

(a) A complete DD Form 696 inspection shall be conducted immediately to assess continuing applicability of facility security procedures and safeguarding of classified information.

(b) A supplemental DD Form 374 survey shall be completed to amend those portions of the previous survey pertaining to the relocation.

(c) The existing DD Form 441 (or the DD Form 441-1 when appropriate) shall be amended to reflect the change in address of the facility or, where administratively more feasible, a new DD Form 441 or 441-1 shall be executed.

(d) A DIS FL 381-R shall be issued.

(e) A DIS Form 553 shall be submitted for the facility at the new address indicating in item 11 reasons for such submission and noting the administrative termination of the FCL at the "old address. The CSO shall forward a pending DIS Form 553 reflecting the new address of the facility immediately following receipt of report 01 on address change. Include in item 11 of the form a cross reference to the existing DIS Form 553 in the PSCF and the specific reason for submission. This will permit DISCO to accept and process PCL's for the facility pending receipt of the DIS Form 553 to be submitted when all actions to process the FCL to a valid status have been completed. In addition, DTIC shall be notified as required by paragraph 2-116j. Of course, if it is possible to do so, a complete DIS Form 553 shall be sent at once to DISCO instead of a pending DIS Form 553.

(2) If the change involves only a change of address, with no relocation of any elements of the facility, the actions indicated in paragraphs (1) (c), (d), and (e) above shall be completed.

(3) If the facility does not have a current procurement requirement, does not possess classified information, and it is otherwise appropriate, action shall be initiated under paragraph 2-119 for administrative termination of the FCL.

d. Closing of Business and Bankruptcy. In all instances in which information is received by the CSO that a facility previously granted a FCL has closed its doors, gone out of business, been adjudicated, bankrupt, and so on, the CSO shall administratively terminate the FCL (see paragraph 2-119). This shall include the withdrawal of DIS FL 381-R and termination of the DD Form 441. This information shall be processed promptly to DISCO using DIS Form 553 and stating the reasons for such submission under item 11. In addition, a copy of the new DIS Form 553 shall be sent directly to DTIC. All classified information shall be recovered promptly from the facility by the CSO in coordination with contracting. UA(s). A "close-out" inspection shall be conducted to assure that proper action has been taken. All actions taken to ensure proper disposition of classified material shall be indicated under "Remarks" on the DD Form 696.

e. Personnel Actions Affecting a Facility Security Clearance. Whenever a PCL for an individual who is required to be cleared in connection with a FCL pursuant to paragraph 2-113 is denied, revoked, suspended, or withdrawn the provisions of paragraph 2-121d apply.

f. Changes Involving Representatives of a Foreign Interest. Where citizens or immigrant aliens are required to be cleared in connection with the FCL and these individuals fall within the definition of RFI, the procedures set forth in paragraph 2-113h shall be followed. In the event personnel previously cleared in connection with the FCL become RFI's, the contractor is required to report this change to CSO and the procedures set forth in paragraph 2-113h shall be followed.

g. Placement of Contractor on Debarred Bidders' List. Each issue of the "Consolidated List of Debarred, Suspended, and Ineligible Contractors" shall be reviewed to determine whether any facilities under security cognizance have been listed. Instructions are located in the front of each issue of the list. Debarment and suspension actions, codes A and B, are considered pertinent from a security interest point of view. If a facility is so listed, the CSO shall seek assistance from legal counsel before proceeding with further action. If warranted by the circumstances, the CSO shall do the following.

(1) invalidate the FCL. The FCL and safeguarding ability shall not be verified.

(2) A DIS Form 553, annotated to reflect the invalidation and the reasons for it, shall be placed in the files of the CSO, DISCO, and DTIC, if appropriate.

(3) If the facility has current access to classified information, UA's of record shall be notified of, the invalidation. On receipt of this notification, the UA contracting officer will determine whether the facility may continue to perform on existing classified contracts and notify the facility and the CSO as soon as possible. If the response indicates that continued processing of PCL's is necessary, DISCO - shall be so advised.

(4) The facility shall be notified that the FCL is invalid, that performance on existing contracts may be continued pending final determination by the UA contracting officer, and that access to additional information or contracts will not be permitted until the debarment or suspension is terminated.

(5) Administratively terminate the FCL if the contractor is not performing on a classified contract and is no longer in possession of, or having access to, classified information.

h. Changes Involving a Parent Organization. Whenever the FCL of a parent organization is terminated, the CSO of all subsidiaries of the parent that have a FCL shall be immediately notified. In this event, the FCL of the subsidiaries shall also be terminated, unless the exclusion procedures set forth in paragraph 2-104b can be applied. Similarly, if the clearance of the HOF of a MFO is terminated, the clearance of all operating facilities will also have to be terminated.

i. Upgrading of a Facility Security Clearance. Where a FCL is to be upgraded, the following actions shall be taken.

(1) A DIS Form 553 shall be submitted to DISCO, indicating in item 11 the specific reason for such submission.

(2) The facility shall be granted a new LOC reflecting the current level of the FCL .

j. Distribution List Notifications. The PIC-CVA, or the CSO if \* appropriate, shall, when it has previously verified the FCL and safeguarding \* capability of a facility in accordance with paragraph 1-110e, or paragraph 5x, ISM, and continuing distributions of classified material under the terms of the contract or program is specified, immediately notify the releasing contractor and the UA contracting activity when information is received which would adversely affect the FCL and safeguarding capability within one year of the \* initial verification, or reverification. \*

k. Changes Involving FOCI.

. (1) In all instances of changes involving FOCI, actions required by paragraph 2-203 shall be promptly taken.

(2) When the elements of FOCI are extensive '(see paragraph 2-203c), the FCL shall be invalidated by the CSO and the FCL and safeguarding capability shall not be verified.

(a) A DIS Form 553 annotated to reflect the invalidation and the reasons therefore shall be placed in the files of the CSO, DISCO, and DTIC, if appropriate.

(b) If the facility has current access to classified information, UA's of record shall be notified of the invalidation and the actions initiated to nullify the FOCI elements. On receipt of this notification, the UA contracting officer will determine whether the facility may continue to, perform on existing classified contracts and notify the facility and the CSO as soon as possible. If the response indicates that continued processing of PCL's is necessary, DISCO shall be so advised.

(c) The facility shall be notified that the FCL is invalid, that performance on existing classified contracts may be continued pending final determination by the UA contracting officer, and that access to additional classified information or contracts will not be permitted until all FOCI elements are resolved.

(d) If after 30 days the facility fails to submit an acceptable plan for prompt and effective resolution of the FOCI elements, or if the facility subsequently fails to adhere to such plan, the matter shall be referred to the Director, DIS, ATTN: Deputy Director (Industrial Security), in accordance with paragraph 2-203c for consideration of revocation of the FCL.

2-119 Administrative Termination of a Facility Security Clearance.

a. An annual review shall be made by the CSO of facilities under its cognizance for the purpose of determining those facilities for which a FCL is no longer required. Generally, a FCL shall be administratively terminated when the contractor has not had an active classified contract or project for the preceding-9 months, has not been afforded authorized access during the preceding 9 months, and has no immediate prospects for obtaining a classified contract. When a facility has not had a classified contract or project for the preceding 9 months, but has classified material in its custody, the UA which approved the retention shall be requested to determine if there is a continuing requirement for the facility to retain custody of the classified material. Where there is not a continuing requirement for the facility to retain classified material, the actions set forth in paragraph b below shall be taken.

b. When, on the basis of the foregoing guidance, the CSO determines that a FCL should be administratively terminated, or the contractor requests termination of the FCL in accordance with section IV, DD Form 441, a "close-out" inspection shall be conducted and the following action shall be taken at its conclusion.

(1) Advise management of the facility in writing as follows.

(a) The existing FCL's and PCL's will be administratively terminated unless management can satisfactorily justify within 30 days the need for the retention of their FCL.

(b) The proposed action in no way reflects adversely upon the facility's security eligibility or ability to safeguard classified information.

(c) The facility may be processed for a new clearance with a minimum of delay when the occasion and need arises for the facility to perform on classified work or otherwise require access to classified information.

(2) On completion of above action and 30 days after the notification to management, if management does not justify the need for the retention of the FCL, the CSO shall administratively terminate it. This requires the administrative withdrawal of the DIS FL 381-R and termination of the DD Form 441. The DIS Form 553 shall be forwarded promptly to DISCO stating the reasons for termination. In addition, a copy of the new DIS Form 553 shall be sent directly to DTIC, if the facility had previously been certified as eligible for DTIC classified services. The DISCO will administratively terminate all PCL's previously issued to the facility, and where an investigation is in process, arrange for its cancellation. However, "Personnel Security Clearance Change Notification" (DISCO Form 562) will be held for 25 months in the PSCF.

(3) If at the time of the "close-out" inspection (see paragraph 4.300) conducted just prior to the administrative termination of the FCL, the facility was not in possession of classified information, this fact should be indicated under "Remarks" on the DD Form 696. Should the facility be in possession of classified information, it shall be recovered from the facility by the CSO in coordination with the UA prior to termination of the FCL. All actions taken to assure proper disposition of classified material shall be indicated under "Remarks" on the DD Form 696, "Industrial Security Inspection Report," in accordance with paragraph 4-300.

c. Examples of justification for retention of a FCL are: an impending request for a bid or quotation on a classified contract from a UA or a prime contractor; planned attendance at a forthcoming classified meeting of the type described in paragraph 5q, ISM, which is supported by a contracting officer; current preparation of an unsolicited proposal containing classified information; or receipt by the CSO of a written request from a UA requesting that the facility retain its FCL because of the imminent award of a classified contract, because of a continuing requirement for use of the facility as a bid source, or because of the facility's unique capabilities. Justification for retention of a dormant FCL shall be revalidated annually in writing by the UA or contractor requiring the retention of the FCL.

## 2-120 Reprocessing or Revalidating a Facility Security Clearance.

a. In the event a, classified procurement need arises after the FCL has been terminated, the CSO shall reassume cognizance and process a new FCL in accordance with this regulation. If processing occurs within 12 months after the termination, PCL's valid at the time of termination may be revalidated by notifying DISCO. This is accomplished by DISCO Form 562 in the same manner



as a reemployment. In the case of an OODEP, the 'DISCO Form 562 is submitted to' DISCO by the CSO with an appropriate letter of explanation.

b. Before" "a facility with a defective FCL can be granted access to classified information in connection with a new contract, action shall be initiated to process the clearance to a valid status. In processing a defective FCL to a valid status, the following specific actions shall be taken by the CSO.

(1) The "Central Index File Request" (DD Form 555) shall be used to secure copies of the existing records from DISCO in all instances where the files of the CSO are not complete.

(2) The name and address of the facility shall be verified or corrected.

(3) The names and positions of the facility OODEPs cleared in connection with the original FCL shall be verified as still occupying the position and being appropriately cleared. If different persons appear in any of these positions, they shall be appropriately cleared, or their PCL's verified.

(4) If appropriate, a DD Form 441 and/or a DD Form 441s, shall be executed.

(5) A DD Form 374 shall be conducted.

(6) A new DIS Form 553 based on the verified or corrected information shall be completed and forwarded to DISCO.

(7) A new DIS FL 381-R based on the verified or corrected information shall be forwarded to the facility. This new DIS FL-381-R shall supersede and replace all others held by the facility.

#### 2-121 Denial, Suspension, or Revocation of a Facility Security Clearance.

a. A FCL shall not be granted by the CSO unless the requirements of paragraph 2-111 have been satisfactorily completed.

b. When any OODEP (unless excluded. as prescribed in paragraph 2-113g) required to be cleared in connection with the FCL is considered to be unsuited for access to classified information under the standards and criteria promulgated in the Industrial Personnel Security Clearance Program, DISCO shall submit a recommendation for the denial, suspension, or revocation of his or her PCL together with a copy of the report of investigation to the DISCR, OGC, OSD. The letter shall advise that the denial, suspension, or revocation will affect the FCL and accordingly priority handling shall be requested. In the event interim action is warranted in the interests of national security, DISCO shall take action in accordance with paragraph 2-320c.

c\* In the event that a determination is made under the Industrial Personnel Security Clearance Program that the individual concerned is eligible to be cleared, the DISCR shall notify DISCO who, in turn, shall advise the CSO which shall grant or revalidate the FCL, as appropriate.

d. In those cases in which individuals, required to be cleared as part of a FCL under the provisions of paragraph 2-113 are denied PCL's or have their PCL's suspended or revoked by action of DISCR, DISCR shall notify the Director, DIS, ATTN: Deputy Director (Industrial Security), who shall, in turn, notify the CSO of the facility involved and DISCO. On receipt of this notification, DISCO shall immediately record the DISCR decision pertaining to the individual in the PSCF. The CSO shall immediately notify the facility that its FCL will not be granted or that it will be suspended or revoked unless one of the following conditions is met.

(1) In the case of individuals who have had their PCL's suspended, the facility furnishes positive assurance that such individuals will not have, and can be effectively excluded from, access to all classified information in the possession of the facility and that the individuals will not be in a position that would enable them to affect adversely the organization's policies or practices in the performance of classified contracts pending a final DISCR decision on the suspension action.

(2) In the case of individuals who have had their PCL's denied or revoked, the facility takes immediate action to remove the individuals concerned from their official positions and furthermore, furnishes positive assurance that they will not have, and can be effectively excluded from, access to all classified information in the possession of the facility.

(3) In each instance in which a company seeks to give such assurances, the following guidelines shall be taken into account:

(a) the position which the company officials hold and the extent of their ownership of the company, if any - for example, it would be very difficult to accept the company's assurance that a president of a company or an OODEP owning or controlling a sizable amount of stock could be denied access to classified information or control over the administration of classified contracts;

(b) the seriousness of allegations which led to the suspension of the company officials' PCL's - charges of subversive activity raise very grave questions with respect to the desirability of permitting the retention of high ranking company officials in their office-pending the \* outcome of their security cases; and

(c) the actions which the facility has taken to relieve the officials of their authority and the degree to which they have been removed from access to classified information. For example, a company might place officials whose clearances have been suspended on official leave or, if they continue on in active status, transfer them to a facility having no classified contracts. In such a case, provided notice that these officials' clearances have been suspended is given to the other company officials, it may be appropriate to withhold action that would revoke the FCL.

(4) In summary, this paragraph must be considered in the light of all facts of a particular case. The fact that officials have been removed from their offices or given different titles, pending determinations of their security cases, does not of itself provide the positive assurance that they can be effectively denied access to classified information. The officials'

inherent power. and authority, and with it the likelihood of access to classified information, requires close scrutiny. Whenever there is any doubt as to the sufficiency of the action taken by the contractor pursuant to paragraphs (1) or (2) above, the CSO shall immediately request advice - from the Director, DIS, ATTN: Deputy Director (Industrial Security).

(5) In all cases where DISCR has denied, revoked, or suspended the PCL of an OODEP, the CSO shall complete the actions prescribed by this paragraph and paragraph e below, pertaining to the affected facility, within 5 working days of notification of the DISCR decision. If the action is not accomplished within the prescribed time, the CSO shall formally advise the Director, DIS, ATTN: Deputy Director (Industrial Security), through the Regional Director, of the reason for the delay.

e. If the facility does not take prompt positive action as required in paragraph d above, the CSO shall be responsible for the following.

(1) If the contractor is not performing on a current classified contract, suspend or revoke the FCL, as appropriate. In this connection the CSO shall take Immediate action to recover all classified information in the contractor's possession.

(2) If the contractor is performing on a classified contract, the CSO shall take immediate action to ensure that all classified information in the contractor's possession is being effectively safeguarded. The CSO shall coordinate with the contracting officer of the UA concerned who shall determine whether to terminate or continue the contract. If the UA's decision is to continue the contract, the CSO shall notify Director, DIS, ATTN: Deputy Director (Industrial Security) and supply a full statement of the facts. The CSO shall take appropriate action to ensure that the contractor is permitted access only to that classified Information necessary in the performance of the contract concerned. All other classified information in the contractor's possession shall be recovered. If the UA's decision is to terminate the contract, the CSO shall suspend or revoke the FCL, as appropriate, and take immediate action to recover all classified information in the contractor's possession. The action taken shall be reported promptly to DISCO through the submission of a DIS Form 553, with a copy of the DIS Form 553 sent to the DUSD(P), ATTN: DSP&P, The Pentagon, Washington, D.C. 20301 and Director, DIS, ATTN: Deputy Director (Industrial Security). The DTIC shall be advised by submission of a revised DIS Form 553. . ""

f. When a CSO determines that there is immediate danger of classified information being compromised or that security conditions in a facility are unsatisfactory to the degree that the FCL should be revoked, action shall be taken in accordance with paragraph 4-201.

g. If a FCL has been revoked on grounds pertaining solely to the physical elements of security, the LOC issued for the personnel of the facility need not be revoked. In such cases, however, the individuals concerned shall not be furnished access to additional classified information. If corrective action is subsequently taken by the contractor to bring the facility up to the standards prescribed in the ISM, the CSO may grant a new FCL. If such action is taken within 6 months from the time of revocation of the FCL, it will be

unnecessary to issue new LOC's for the personnel of the facility. If the time lapse is more than 6 months, the investigations of the personnel concerned shall be brought up to date and new LOC issued.

h. When a FCL has been granted and any information develops which indicates that the facility should no longer be eligible for the FCL, the activity discovering such information shall immediately report the facts to the CSO. In coordination with interested UA's, the CSO shall take necessary action to safeguard the classified material and, if appropriate, proceed to revoke the FCL in accordance with paragraph 4-201. The Director, DIS, ATTN: Deputy Director (Industrial Security) shall be advised and where indicated, a full report shall be made to the DUSD(P), ATTN: DSP&P. The DISCO shall be advised promptly of such action by submission of a DIS Form 553.

2-122 Appeals Not Authorized. In the following cases, denial or revocation of a FCL is taken exclusively by the DIS; appeals to the DUSD(P), ATTN: DSP&P, are not authorized:

a. cases involving research, development, and production of COMSEC or SENSITIVE COMPARTMENTED INFORMATION equipment or information;

b. cases involving denial or revocation of a FCL for a contractor or prospective contractor based on grounds of an overall security evaluation of unsatisfactory, or on conditions which constitute an Immediate danger of compromise of classified information;

c. cases involving failure of the contractor to obtain a PCL for or to exclude a RFI; and

d. cases involving contractors listed in the "Consolidated List of Debarred, Ineligible, and Suspended Contractors," provided the CSO has taken the action required by paragraphs 2-111g and 2-118g.

2-123 Reprocessing of a Facility Security Clearance That Has Been Revoked.

a. If a FCL has been revoked for the reasons set forth in paragraph 2-121f, and the CSO considers that there are new circumstances which warrant granting a FCL, recommendations shall be made to the Director, DIS. On approval, a new FCL shall be granted by the CSO.

b. If a FCL has been denied or revoked as a result of action taken by DISCR and the CSO considers that there are new circumstances which warrant the granting of a FCL, recommendations shall be made through DISCO to the DUSD(P), ATTN: DSP&P. This procedure does not authorize the CSO to grant a FCL in such case, pending final action under the Industrial Personnel Security Clearance Program.

## PART 2. U.S. FACILITIES THAT ARE FOREIGN OWNED, CONTROLLED, OR INFLUENCED

2-200 Application. This part establishes the policy concerning the clearance of facilities under FOCI; provides criteria to reconsidered for

**determining** whether facilities located **in** the U.S., Puerto Rico, **and** U.S. possessions or trust territories are **under** FOCI; prescribes procedures for **" the clearance of facilities determined to be under FOCI; and outlines responsibilities in FOCI matters,**

2-201 General Policy.

a. A facility shall be considered under FOCI when a reasonable basis **exists** to conclude that the nature and extent of FOCI **is** such that foreign dominance over the management or operations of the facility may **result in** the compromise of, classified information or impact adversely the performance on class if **ied** contracts.

b. A facility that is owned, controlled, or influenced by a foreign national or a commercial or, governmental entity from a Communist country or a country overtly hostile to the U.S. **will** not be eligible for a **FCL**.

c. A **f acility** that is **owned**, controlled, or influenced by foreign interests other than those included **in** b above may be eligible for a FCL, provided action can be taken to **negate** effectively or reduce associated FOCI risks to an acceptable level.

d. Contractors cleared or being considered for a FCL under this part who require release of **COMSEC** information are subject to the provisions contained in the "National Communications **Security** Committee Policy Number 2" (NCSC-2) .

2-202 Factors. The following factors shall be considered in determining whether a business or **educational** entity is under FOCI:

a. foreign interest" ownership or beneficial ownership of 5 percent or more of the organization's securities;

b. ownership of any foreign interest In whole or **in** part;

c. **manag**ement positions held by foreign interests such as **directors, officers,** or executive personnel;

d. foreign interests control or influence or are In a position to -control or influence the election, appointment, or tenure of directors, officers, or executive personnel of the organization;

e. contracts, agreements, understandings, or arrangements with foreign interests;

f. indebtedness to **foreign** interests;

g. any income derived from **Communist** countries, countries overtly **hostile to** the U.S., or income **in** excess of 10 percent of gross income from other foreign interests;

h. 5 percent or more of any class of the entity's securities are held in "nominee shares," in "street names," or in some other method that does not disclose the beneficial owner of equitable title;

i. interlocking directors with foreign interests; or

j. any other factor that indicates or demonstrates a capability on the part of foreign interests to control or influence the operations or management of the business organization concerned.

2-203 Procedures.

a. If any of the factors outlined in paragraph 2-202 above are present, the CSO shall review the case to determine the relative significance of each factor in assessing the firm's initial or continued eligibility for a FCL. The CSO may be delegated authority to grant or continue a FCL when one or more of the following circumstances are present, provided there is a favorable finding by the Director of Industrial Security:

(1) interlocking directorates involving firms located in non-Communist countries, provided that a general security of information agreement (GS0IA) exists with the country involved;

(2) if licensing, patent, sales, or trade secret agreements exist or are entered into with any foreign interest, including a subsidiary of the contractor, and if the contractor's SPP includes adequate provisions to ensure that RFI's who are parties to such agreements shall be denied access to all classified records, information, and material, and to controlled areas -- in all such cases the contractor shall be informed of the obligation to comply with the State Department's ITAR (reference (i)) as it pertains to such agreements with foreign interests;

(3) if income from Communist countries does not exceed 5 percent of gross income, and income from other countries does not exceed 20 percent of gross income;

(4) if the contractor has ownership in foreign subsidiaries or affiliates that are located in non-Communist countries;

(5) if Information disclosed regarding securities held in "nominee shares" and "street names" reveals no indication of foreign beneficial ownership; or

(6) if indebtedness to foreign interests does not exceed 5 percent of current assets.

b. If the CSO determines that the firm may be ineligible for a FCL or that additional action may be necessary to nullify or negate the effects of FOCI, the firm promptly shall be advised and requested to submit a plan of action to preclude foreign interests from access to classified information. Assistance shall be provided to the facility in formulating such a plan in accordance with paragraph 2-204 below. In addition, management shall be advised that failure to submit the requested plan within the

prescribed period of time will result in termination of FCL processing **action** or initiation of action to revoke an existing **FCL**, as applicable. .

c. Whenever the CSO is unable to resolve the FOCI factors present or has not been delegated authority to grant or continue a FCL as provided for in paragraph a above, the facility case file shall be referred to the Director, **DIS**, ATTN: Deputy Director (Industrial Security), for determination as to eligibility for a FCL. The facility case file shall be documented to set forth the FOCI factors present, as well as the facility's proposed plan of action 7/ to reduce effectively the associated FOCI risks to an acceptable level. The case file also shall contain the CSO's evaluation and recommendation and, as appropriate, an opinion of legal counsel. If legal advice is required to process the case, the Director of Industrial Security should consult with the Office of Counsel of the DCASR servicing the area. Cases in which a foreign interest has acquired a majority of the voting stock of a cleared U.S. firm will be reported immediately to the Director, **DIS**, ATTN: Deputy Director (Industrial Security), concurrent with invalidation of the **FCL** in accordance with paragraph 2-118k above.

d. On receipt of a referral from the CSO, the Director, **DIS** will cause a review to be made of the case. If, after such review, it is determined that unacceptable risk associated with FOCI is present, and that the facility's proposed plan to negate or eliminate such risk is inadequate, the Director, **DIS** shall advise the facility, through the CSO, of the measures required to become eligible for a FCL. The facility shall be advised that failure to adopt the recommended or other acceptable measures shall preclude final determination of the facility's eligibility for a FCL and will result in denial or revocation of the FCL. If, however, the facility's proposed plan is viewed as adequate by the Director, **DIS**, or the modifications suggested by **DIS** are subsequently accepted by the facility, the Director, **DIS** shall determine the facility to be eligible for a FCL.

e. in the event of an adverse determination by the Director, **DIS**, the facility shall be advised that the decision may be appealed in writing to the Deputy Under Secretary of Defense (Policy) (**DUSD(P)**), ATTN: Director, Security Plans and Programs, whose decision in such matters shall be final.

2-204. Assistance. Whenever requested by the facility, or on receipt of the report required by paragraph 6a(4)(f), **ISM**, the CSO or the Deputy Director (Industrial Security), **HQ DIS** shall provide the facility in writing

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7/ A facility's proposed plan of action may consist of one of the methods prescribed by 2-205 below, or any combination thereof, as appropriate. It may also consist of measures that provide for the physical or organizational separation of the facility component performing the classified work, modification or termination of agreements with foreign interests, diversification or reduction of foreign source income; assignment of specific security duties and responsibilities to board members; formulation of special executive-level security committees to consider and oversee classified matters; and other actions to negate or reduce FOCI to acceptable levels.

with the DoD policy regarding FOCI and will consult with the facility as needed to provide additional advice and guidance regarding the facility's proposed action plan. Documents relating to these discussions and reports made pursuant to the foregoing are presumptively proprietary when appropriately designated by the facility and shall be protected from unauthorized disclosure and handled on a strict need-to-know basis. When such reports are submitted in confidence, they shall be marked "FOR OFFICIAL USE ONLY" (FOUO). DoD Directive 5400.7 (reference (1)) contains exemptions which, to the extent applicable to FOUO records, may be invoked to withhold them from public disclosure. .

2-205 Methods to Negate or Reduce Risk in Foreign Ownership Cases.

Under normal circumstances, foreign ownership of a U.S. firm under consideration for a FCL becomes a concern to the DoD when the amount of foreign owned stock is at least sufficient to elect representation to the U.S. firm's board of directors, or foreign interests are otherwise in a position to select such representatives (equivalent equity for unincorporated business enterprises). Foreign ownership which cannot be so manifested is not, in and of itself, considered significant and, therefore, shall not be considered as the sole criteria for processing under this paragraph 8/.

a. Board Resolution. When the amount of stock owned by the" foreign interest is sufficient to elect representation to the board or an agreement exists whereby the foreign interest is permitted representation on the board, the effects of foreign ownership will ordinarily be mitigated by a resolution of the board of directors whereby the cleared firm recognizes the elements of FOCI and acknowledges its continuing obligations under the DD Form 441. The resolution shall identify the foreign shareholders and their representatives, if any, and note the extent of foreign ownership, including a certification. that the foreign shareholders and their representatives will not require, will not have, and can be effectively excluded from access to all classified information in the possession of the. cleared facility, and will not be permitted to occupy positions that may enable them to influence the organization's policies and practices in the performance of classified contracts. Copies of such resolutions shall be furnished to all board members and principal management officials. in addition, the substance of the foregoing resolutions shall be brought to the attention of all "cleared personnel by publication in the firm's SPP. An annual certification shall be provided to the CSO acknowledging the continued effectiveness of the resolutions. Compliance with the resolutions shall be verified during periodic security inspections. There are circumstances when it may become' necessary for the board of directors to adopt further resolutions and take additional administrative actions in order to assure the U.S. Government that the existing FCL remains clearly consistent with the national interest. The following criteria also shall

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8/ Instances involving less significant foreign stockholdings are analyzed to assess source and to determine possible-significance when considered in conjunction with other aspects of foreign involvement that may be present in a, particular case.



be satisfied in order for a board resolution to be used as the sole method required to negate or, effectively reduce the risk of compromise arising from foreign ownership within the levels prescribed herein.

(1) Identified U.S. interests own a majority of the stock, a foreign interest is not the largest single shareholder, and the nature and distribution of the minority **stockholdings** and the composition and structure of management do not permit foreign interests to control or dominate the business management of the U.S. firm.

(2) The chairman and chief executive officer of the U.S. firm are U.S. citizens.

b. Voting Trust Agreement. A voting trust agreement is an acceptable method to eliminate risks associated with foreign ownership when a foreign interest owns a majority of the voting securities of the U.S. firm or, if less than 51 percent foreign owned, it can be reasonably determined that the foreign stockholders or their representatives are in a position to effectively control or have the dominant influence over the business management of the U.S. firm. Under this arrangement, the foreign stockholders shall transfer legal title of foreign-owned stock to the trustees. The voting trust arrangement unequivocally shall provide for the exercise of all prerogatives of ownership by the trustees with complete freedom to act independently without consultation with, interference by, or influence from foreign stockholders. Except, however, the trust agreement may limit the authority of the trustees by requiring that approval be obtained from the foreign stockholder(s) with respect to: (i) the sale or disposal of the corporation's assets or a substantial part thereof; (ii) pledges, mortgages, or other encumbrances on the capital stock that they hold in trust; (iii) corporate mergers, consolidations, or reorganization; (iv) the dissolution of the corporation; and (v) the filing of a bankruptcy petition. The trustees shall assume full responsibility for the voting stock and for exercising all management prerogatives relating thereto in such a way as to ensure that the foreign stockholders, except for the approvals just enumerated, shall be insulated from the cleared facility and continue solely in the status of beneficiaries. The facility shall be organized, structured, and financed so as to be capable of operating as a viable business entity independent from the foreign stockholders. The certification and visitation provisions of paragraphs 2-206 and 2-207 below are required under this arrangement. There shall be three trustees, and at least one shall become a member of the board of directors. In addition, trustees shall be:

(1) responsible U.S. citizens residing within the U.S., who are capable of assuming full responsibility for voting the stock and exercising the management prerogatives relating thereto in such a way as to ensure that the foreign stockholders shall be effectively insulated from the cleared facility,

(2) completely disinterested individuals with no prior involvement with either the facility or the corporate body in which it is located, or the foreign interest, and .

(3) eligible for and issued a PCL to the level of the FCL.

When a vacancy occurs, a successor trustee shall be appointed by the remaining trustees. Before being accepted as trustees by the Director, DIS, the "trustees shall be advised, in writing, by the CSO of the duties and responsibilities they are undertaking on behalf of the U.S. Government to insulate the cleared facility from the foreign interests. Moreover, the trustees shall indicate, in writing, their willingness to accept this responsibility.

c. Proxy Agreement. Under this arrangement, the voting rights of stock owned by foreign Interests are conveyed to the proxy holders by means of an irrevocable proxy agreement. Legal title to the stock remains with the foreign interests. All other provisions of the voting trust as applies to trustees and the terms of the agreement shall apply to the proxy holders in the case of a proxy agreement. Conditions for consideration of use are the same as required for the above.

d. Reciprocal Clearance. The DoD has entered into reciprocal industrial security agreements with certain of its allies. These agreements establish arrangements whereby a contractor facility located in either signatory country, which is under the ownership, control, or influence of an entity from the other country may be declared eligible for access to classified information. This arrangement also provides for the clearing of foreign nationals who occupy a position required to be cleared in connection with the issuance of a FCL. FCL action is based on the receipt of an assurance from the government of the country from which the FOCI emanates that the parent firm has been cleared to the necessary level under that government's security laws and procedures. Since clearance actions in such cases rely, in part, on the investigative and clearance procedures of the other signatory government, such reciprocal agreements are negotiated only with countries whose security laws and procedures are substantially equivalent to those of the U.S. If a facility is to be processed for a reciprocal FCL, the procedures outlined in paragraph 2-117 above shall be followed. A reciprocal FCL may be granted upon satisfaction of the following criteria and conditions:

(1) there is a reciprocal industrial security agreement with the foreign government concerned;

(2) a foreign business entity enjoys majority or controlling ownership of the U.S. firm, or a foreign interest is otherwise in a position to effectively control or have the dominant influence over the business management of the U.S. firm; and

(3) the facility does not require access to classified information which is not releasable to the foreign government from which the ownership stems.

e. Special Security Agreement.

(1) This arrangement may be considered for use when the foreign interest owns a majority of the voting stock of a U.S. firm or, if less than a majority is owned, such stockholdings are sufficient to conclude

reasonably that the foreign shareholders or their representatives are in a position to effectively control or have the dominant influence over the business management of the U.S. firm, and the foreign shareholders elect to retain control or dominance of operations and management.

(2) Eligibility for processing under this paragraph also requires a UA and OSD determination that issuance of a FCL will serve the national interest. Such determinations along with sufficiently detailed supporting justification, shall be forwarded to the DUSD(P), ATTN: Director, Security Plans and Programs, for confirmation in coordination with appropriate OSD staff elements. The authority to make this determination shall not be delegated below the Assistant Secretary or comparable level of the UA concerned or his or her designee. Following confirmation of national interest considerations <sup>9/</sup> end coordination with non-DoD components, as appropriate, DUSD(P) will direct DIS to initiate development of a special security agreement and inform DIS regarding any prohibited categories of classified information (see paragraph 2-117a), access to which is not required by the U.S. firm, and which will not be authorized for release after issuance of the FCL. Categories of such information not approved for release, if any, shall be reflected on DIS Form 553, DIS FL 381-R, and DISCO Form 560.

(3) The special security agreement concept may be considered as a fully acceptable alternative to voting trust or proxy agreement arrangements, provided the ownership stems from a country in which the U.S. has entered into a formal reciprocal security agreement and all personnel required to be cleared in connection with the FCL are U.S. citizens, except that the facility shall normally be ineligible for a TOP SECRET FCL. This arrangement may also be considered when the ownership stems from countries in which the U.S. has not entered into formal reciprocal arrangements, provided a GS01A or other similar bilateral security agreement exists with the country concerned, all personnel required to be cleared in connection with the FCL are U.S. citizens, and the FCL is limited to the CONFIDENTIAL level.

(4) This agreement ordinarily shall include annual FOCI meetings with the principals, visitation agreements (appropriately modified), assignment of specific security duties and responsibilities to board members, formulation of special executive-level security committees to consider and oversee classified matters, and the execution of any board resolutions deemed necessary. A facility under FOCI may be granted a FCL under this arrangement only when the terms and conditions of the special security agreement, in conjunction with ISM requirements, are determined to reasonably and effectively preclude the unauthorized disclosure of classified information to foreign interests. The measures taken to accomplish necessary security safeguards will depend upon the nature and extent of FOCI in each particular case. Accordingly, each such special security agreement is considered unique and its contents shall be developed and tailored on a case-by-case basis, wholly dependent on the facts and circumstances present in each instance. The special security agreement shall generally prescribe

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<sup>9/</sup> The NSA, as the Executive Agent for COMSEC, enjoys final approval authority regarding the release of COMSEC information to a facility operating under special agreement arrangements.

responsibilities, obligations, limitations, and other security safeguards and mechanisms concerning personal, physical, and organizational aspects deemed necessary by the parties to the agreement. The U.S. firm, the foreign interests, and the DoD shall be parties to the agreement.

(5) The granting of a FCL under this arrangement, or any request for an exception to the policy prescribed herein, requires the approval of the DUSD (P).

2-206 Visitation Agreements. In every case where a voting trust agreement, proxy agreement, or special security agreement is employed to eliminate risks associated with foreign ownership, a visitation agreement shall be executed between the facility, the foreign interest, the CSO, and as appropriate, trustees, proxy holders, or other designated individuals, hereinafter referred to collectively as trustees. Visitation agreements shall identify who may visit, for what purposes, when advance approval is necessary, and the approval authority. The trustees shall have approval authority. The facility shall submit individual requests to the approval authority for each visit. The visitation agreement shall provide that, as a general rule, visits between the foreign stockholder and the cleared U.S. firm are not authorized; however, as an exception to the general rule, the trustees, may approve such visits in connection with regular day-to-day business operations pertaining strictly to purely commercial products or services and not involving classified contracts.

2-207 Certification and -Compliance. At the inception of any method, agreement, or similar arrangement entered into pursuant to paragraph 2-205 above, and at least once each year thereafter, representatives of the CSO, HQ DIS, the trustees, proxy holders, facility management, or, as appropriate, other designated individuals, and if requested, the foreign interests, shall meet to review the purpose of the pertinent arrangement and to establish a common understanding of the operating requirements and how they will be implemented within the firm. These FOCI reviews will be aimed expressly at ensuring compliance with all board resolutions, special controls, practices, and procedures established to insulate the facility from the foreign interest generally, and to discuss matters pertaining to the compliance or acts of noncompliance with the terms of voting trust, proxy, or special security agreements specifically. These reviews also provide the opportunity for DIS to furnish the principals with any necessary guidance or assistance regarding problems or impediments associated with the practical application or utility of the approved arrangement, such as foreign disclosure determination delays and non acceptance of visit requests. In addition, at the end of each year of operation, the trustees, shall submit to the CSO an annual implementation and compliance report. Any indication of noncompliance must be explained, in writing, by the firm for evaluation by the CSO. Failure on the part of the U.S. firm to ensure compliance with the terms of the applicable arrangement in the best interests of the U.S. Government, may constitute grounds for termination of the DD Form 441 and revocation of the FCL.

2-208 Effects of This Part on Prior Facility Security Clearances. U.S. firma granted FCL's under previous policy will not be affected by this part. Such firma may, as appropriate, however, request modification of existing arrangements in accordance with this part.

### Part 3. PERSONNEL SECURITY CLEARANCES AND DENIALS FOR CONTRACTOR PERSONNEL

2-300 Application. This part establishes policy and procedures for the granting of PCL's for U.S. contractor personnel, including Immigrant aliens; security assurances for U.S. citizens in countries with which the U.S. has entered formal reciprocal arrangements and security assurances for citizens of these countries who are employees of U.S. contractors; and for the granting of access authorizations to NATO classified information. In addition, this part sets forth procedures for the recommendation for suspension, revocation, or denial of PCL's.

#### 2-301 Security Clearances for Personnel

a. General. A PCL is an administrative determination that an individual is eligible, from a security point of view, for access to classified information of the same or lower category as the level of the PCL being granted. A PCL granted by the DoD or by a contractor for access to classified information is valid for access to classified information of the same or lower category. A PCL (or an interim PCL) is required for contractor personnel prior to granting them access to classified information. Personnel shall not be cleared for access to classified information of a higher category than the level of security clearance of the facility at which they are employed except for.

(1) consultants, as provided for in paragraph 2-106 of this regulation, and

(2) employees of a MFO (including those employed or physically located at uncleared facilities) who (i) require access to a higher category of classified information in connection with the performance of their duties at another cleared facility or at a government installation, or (ii) are transferred to an uncleared facility or to a facility with a lower level of clearance within the MFO, provided the contractor desires to retain the LOC at the higher level so it will be available in the event the individual is transferred back to a facility at which the clearance will be needed. A clearance granted under this authority shall not be of a higher category than the PCL of the HOF or appropriate PMF of the contractor, and the LOC will be issued or forwarded to the HOF or PMF.

b. Interim Clearances. In an emergency situation, in order to avoid crucial delays in precontract negotiations or contract negotiations, on performance of a contract or under the conditions described in paragraphs 2-307h, 2-308e(2), 2-308g(2), or 2-111b(4) of this section, a PCL based on lesser Investigative requirements as prescribed by this regulation may be granted on a temporary basis, pending the completion of the full investigative requirements. If, on review of the DD Form 48 or DD Form 49 it is apparent that the full investigative requirements for the level of PCL requested cannot be completed to meet prescribed standards, an investigation to satisfy lesser interim investigative requirements shall not be initiated nor shall an interim PCL be granted. The facility and the contracting officer shall be notified to this effect. When a clearance based upon the lesser standards is authorized, this shall be identified as an interim PCL. An Interim PCL shall not be

granted unless a request for investigation of a type required to satisfy final clearance requirements has been initiated. When an interim PCL has been granted and derogatory information is subsequently developed during the course of the investigation, the Director, DISCO may withdraw the interim clearance, pending the completion of the investigation. Notice of this action shall be furnished to the facility. Such withdrawal will not be construed as a denial or revocation of the clearance and referral of the case to the DISCR, OGC, OSD for processing is not required prior to the completion of the investigation; however, the DISCR, OGC, OSD shall be notified promptly of all such withdrawals of interim clearances and the basis therefor.

c. Invalid and Void Clearances. When a clearance is issued as a result of administrative error or to an individual not eligible for clearance, it is invalid and void from the date of issue. When it has been determined that an invalid and void clearance has been issued, the Director, DISCO shall withdraw such a clearance. The Director, DISCO shall apprise the contractor that the withdrawal action is taken without cause or prejudice against the individual. The contractor shall be requested to return the LOC. A copy of such official notice to the contractor shall be provided the CSO and the Deputy Director (Industrial Security), HQ DIS.

d. Administrative Termination of a Clearance on the Basis of Expressed Conviction. A contractor employee who is being processed for an industrial PCL or is currently cleared must have a need for access to classified information in order for a clearance to be processed or continued. Employees who have submitted their DD Forms 48 or 49, but who aver on the form, or otherwise make it known that they will not work on a classified contract or perform in a capacity requiring access to classified information for any reason, cannot be considered either as bona fide candidates for clearance or individuals whose continued clearances are in the best interest of the government, notwithstanding the formal initiation of clearance requests or the issuance of a clearance. Such a reservation on the part of employees negates the requirement for their clearances because they will not, in fact, have access to classified information. On receipt of a report by the contractor, DISCO will correspond with the employees to obtain verification of such objections and elicit in writing from the employees their individual positions relative to the following questions.

(1) Will these applicants perform duties on a classified defense contract if so assigned by their employer, even though the contract will directly further the military capability of the U.S.?

(2) Will such applicants follow all security directives and instructions, and otherwise fulfill all of their personal responsibilities concerning the safeguarding of classified information?

(3') Will such applicants report to the contractor or to government security representatives any effort by an unauthorized person or persons to elicit any classified information from them?

Should DISCO be unable to elicit a satisfactory response from the employees through correspondence, DISCO shall request interviews of the employees in order to resolve the matter. When verified, the clearance requests or existing clearances will be administratively terminated by the Director or

Deputy Director, DISCO, without prejudice to the individuals concerned, and . the contractor and the employees will be advised of the termination.

2-302 Defense Industrial Security Clearance Office.

a. The DISCO is responsible for initiating investigation, issuing . clearances, maintaining clearance records, and preparing recommendations to the DISCR, OGC, OSD for suspension, revocation, or denial of clearance, when applicable, with respect to PCL's for all contractor personnel falling within the scope of this regulation.

b. The DISCO will receive requests for PCL's from all cleared contractor facilities. Each request will be reviewed for necessity, completeness, and accuracy. The DISCO will, following acceptance of the request, initiate a request for a personnel security investigation.

c\* All actions having a bearing on contractor PCL's will be recorded in the PSCF.

d. Existing LOC's are valid during the periods specified in paragraph 2-307b, or until suspended, revoked (see paragraph 2-320), or administratively terminated, without prejudice to the individual (see paragraphs 2-310 and 2-402). Adverse information concerning the subject of the LOC shall be reported promptly to DISCO.

e. Except as outlined below, LOC's shall be issued to the facility at which individuals are employed or physically located. The exceptions, applicable only in the case of a MFO, are as follows.

(1) This includes situations as described in paragraph 20d, ISM, where the employees, in connection with the performance of their duties at other cleared facilities or a government installation: (i) requires access to a higher category of classified information than the FCL of the facility at which they are employed or physically located, or (ii) when they are are employed or physically located at an uncleared facility. In such cases, the LOC's are issued to the HOF or appropriate PMF of the MFO, and they may not be for access to a higher category of classified information then the level of the FCL of the HOF or PMF.

(2) When contractors elect to have LoC's for all employees issued to the HOF or PMF at which the individuals are employed or physically located, contractors shall include in their SPP this procedure and forward the SPP to the CSO. On receipt of the SPP, the CSO shall review the SPP, coordinate with DISCO, and notify the contractors of the adequacy of the SPP. The CSO may, at its option, visit the uncleared location to evaluate the effectiveness of personnel security administration as it relates to briefings) foreign travel, termination statements, notifications, and so on. The SPP shall identify: (i) each facility of the MFO, or (ii) each facility of the MFO that is located within the geographical or functional area for which the PMF is administratively responsible.

(3) This also includes situations as described in paragraph 20j, ISM, when. individuals are required to be cleared in connection with the HOF security clearance and their primary place of work is at another"

facility of the MFO. In this case, LOC's are issued to both the HOP and the facility where the individuals are primarily employed. An appropriate notation shall be included on the DISCO Form 560.

2-303 Special Status of Certain American Indians Born in Canada. American resident members of the Six-Nation Confederacy or the Sovereign Nation of Iroquois Indians (Seneca, Cayuga, Onondaga, Oneida, Tuscarora, and Mohawk tribes) born in Canada who possess at least 50 percent tribal blood are eligible for clearance for access to classified information in the same manner as any other immigrant alien without, however, being required to possess an immigrant visa for permanent residence. The Immigration and Naturalization Service, Department of Justice, and the Bureau of Indian Affairs, Department of the Interior, shall be checked, in addition to the investigation prescribed by paragraph 2-319 of this part, for registration as aliens and to determine under the provisions of the Immigration and Nationality Act of 1952 (reference (kk)) whether the individual has 50 percent tribal (Indian) blood.

2-304 Transfer of Personnel Between Facilities of a Multiple Facility Organization. The following procedure shall apply when an employee, who has been granted a PCL by the DoD, is transferred within a MFO, and the contractor requires the employee to have access to classified information in the performance of his or her new duties.

a. The DISCO, having been notified by the contractor of the employee's transfer, shall annotate the DISCO Form 560 to show the employee's new place of employment.

b. The individual concerned shall not be requested to submit DD Form 48, DD Form 49, or (FD Form 258) "Applicant Fingerprint Card," unless a higher level of clearance is required at the gaining facility or there is information which indicates that the granting of a clearance might not be clearly consistent with the national interest.

c. A PCL transferred under the provisions of this paragraph may be of a higher security level than the FCL of the gaining facility (see paragraph 2-301a).

2-305 Processing of a Hostage Case.

a. A hostage case is defined as one falling within the range of subsection V K of DoD Directive 5220.6 (reference (11)). The situation described in subsection VK comes about when, with respect to the relatives of the applicant or of the spouse, there are: "any facts or circumstances which furnish reason to believe that the applicant may be subjected to coercion, influence, or pressure which may be likely to cause action contrary to the national interest. Such facts or circumstances may include the presence of a close relative, friend, or associate in a nation whose interests may be inimical to the interests of the U.S., or in satellites or occupied areas of such a nation. Close relatives include parents, brothers, sisters, offspring and spouse."



b. The following procedures shall apply when a contractor, under the provisions of paragraph 24b(5), ISM, submits a hostage case to DISCO for further evaluation and determination of continued eligibility for access to CONFIDENTIAL information. The DISCO shall request that:

(1) a NAC be conducted;

(2) the scope of the investigation be expanded, as appropriate, to resolve the allegation that the individual might act contrary to the national interest because of coercion or pressure due to former residence in, or having relatives in Communist countries; and

(3) a personal interview by the investigative activity be held with the individual to determine the extent of the hostage situation, to provide guidance, and to encourage reporting of any attempted coercion.

c. In all other-hostage cases, DISCO shall:

(1) request the investigation prescribed in paragraph 2-308, and

(2) request the additional actions prescribed in paragraphs b(2) and (3) above.

d. On completion of the action prescribed in paragraphs b or c above, DISCO shall, if clearly consistent with the national interest, issue to the contractor a DISCO Form 560 for the individual concerned. If such determination cannot be made in the case, the procedures outlined in paragraph 2-320 of this regulation shall apply.

#### 2-306 Processing of a Representative of a Foreign Interest Case.

a. Special requirements are established in paragraph 20k, ISM, for submission of a request for clearance on a RFI including those individuals who are presently cleared or those individuals who become RFI's while in the process of being cleared. RFI's are not eligible for PCL's if one of the following conditions exists.

(1) The foreign interest involves a Communist country or a citizen, firm, or other entity of a Communist country.

(2) The individuals' work as representatives of a foreign interest could create a potential conflict of interest situation vis-a-vis their work for the contractor if PCL's were to be issued for them. (A potential conflict of interest situation is considered to exist when an individual's technical or scientific endeavors on behalf of a foreign interest are similar to his or her technical or scientific endeavors on behalf of the U.S. contractor; for example, the individual is performing services as a consultant to a foreign government and to a U.S. contractor involving the same general scientific or technical discipline).

(3) The individuals are not U.S. citizens or U.S. nationals. This general exclusion is not applicable to citizens who are of countries with

which the U.S. has entered into formal reciprocal arrangements and who are eligible for or have been previously granted reciprocal clearances in accordance with the provisions of paragraph 31, ISM. Where it is determined that any of the foregoing conditions exist, the case shall be referred to the Director DIS, ATTN: Deputy Director (Industrial Security). If the Director, DIS concurs in the DISCO determination that any of the foregoing conditions exist, DISCO will be advised to notify the contractor that pursuant to paragraph 20k, ISM, the individual is not eligible for a PCL, and any previously issued PCL shall be administratively withdrawn.

b. In cases where a RFI is eligible to be processed for or continues to possess a PCL, DISCO shall review the clearance application with particular attention to the statement of full disclosure submitted pursuant to paragraph 20k, ISM, to determine the security significance of the foreign affiliation. If DISCO determines the circumstances of the foreign affiliation or other considerations in the case raise a question that the individual may be subject to coercion, pressure, or otherwise influenced or placed in a position which could jeopardize the security of classified information or be otherwise contrary to the national interest, DISCO shall initiate an investigation to obtain all the facts of the matter. This shall include investigation to verify the information furnished by the applicant in accordance with paragraph 20k, ISM, which describes the foreign affiliation. It should be determined whether or not the foreign entity is under Communist ownership, control, or influence. In addition, the nature of the business or activity of the foreign entity should be determined. For example, the report should indicate and fully describe the nature of the business and products of the foreign entity, in order that a determination can be made as to whether the circumstances of the foreign affiliation furnish reason to believe that the individual may be subject to coercion, pressure, or otherwise influenced to act contrary to the national interest. Normally, the necessary information with respect to the foregoing can be obtained from the U.S. Commercial Attache in the country concerned. On completion of the investigation, DISCO shall evaluate the case. It is then determined that any of the conditions described in paragraph .s above, are present, the case shall be referred to the Director DIS, ATTN: Deputy Director (Industrial Security). On the other hand, if the conditions described in paragraph a above are not present, but in light of the individual's status as a representative of a foreign interest and all of the other Information available, the Director, DIS determines that access would not be clearly consistent with the national interest, the case shall be referred to DISCR, OGC, OSD, in accordance with paragraph 2-320.

c. In those cases involving a transfer, conversion, or concurrent clearance, DISCO shall review the clearance application with particular attention to the statement submitted in connection with the request pursuant to paragraph 20k, ISM. If, on the basis of this review DISCO determines that an investigation is warranted because of the circumstances in the case, an investigation to include a NAC and the coverage described in paragraph b above shall be initiated. In such cases, if otherwise appropriate, the LOC shall be issued. The investigation as prescribed above shall be initiated as a post-transfer action. On completion of the investigation, the case shall be evaluated to determine if revocation action is required. When appropriate, such action will be taken in accordance with paragraph 2-320 of this regulation. If the investigation indicates the case falls into one of the

categories described in paragraphs a(1),(2), or (3) above, the case shall be referred to the Director, DIS, ATTN: Deputy Director (Industrial Security).

2-307 Responsibility for Effecting Contractor Personnel Security Clearances.

a. The DISCO shall be responsible for the clearance of such contractor employees as may be required for the performance of any classified contact, except as provided for by paragraph 1-306, or those CONFIDENTIAL clearances which shall be accomplished by the contractor. The DISCO shall complete all actions necessary for the granting of a PCL and will determine whether to grant the clearance or refer the case to the DISCR, OGC, OSD, in accordance with paragraph 2-320. Subject to the provisions of paragraph 2-320, any prior industrial PCL actions that may have been accomplished by any military department, provided these actions meet the investigative basis prescribed in this regulation, shall not be duplicated, but shall be accepted by DISCO.

b. LOC's previously issued to a facility remain valid as long as an individual is continuously employed by that facility and during any period of reemployment with any facility of the same organization which commences within 12 months after the cessation of prior employment, unless otherwise revoked or administratively withdrawn. In addition, when an employee is granted a leave of absence, it shall not be considered as an interruption or discontinuance of employment so long as it does not exceed 12 months.

c. Whenever an individual has been authorized access to classified information within a facility and is subsequently employed by another facility and the procedures established by paragraphs 26e or g, LSM, are followed, DISCO shall issue a LOC based on the previous investigation, provided the following conditions are met.

(1) The individual is still employed by another contractor or there has been a lapse of not more than 12 months between termination of employment and submission of the request for clearance.

(2) The investigative basis upon which the LOC was issued satisfies the requirements of paragraph 2-308.

(3) The new LOC issued for the individual shall not authorize access to information of a higher classification than the of the facility employing him or her, except as provided for in paragraph 2-301a.

(4) When individuals have terminated their employment with the facility where they have been granted PCL's or when individuals also continue to be employed by their other employers in a capacity requiring access to classified information, DISCO shall ascertain from the PSCF that there exists no information which would reflect on the advisability of granting clearances in accordance with this paragraph. This includes an evaluation of information reported under the provisions of paragraph 6a(1) or 6b(1), LSM. However, unless such information is serious enough to support interim suspension actions pursuant to paragraph 2-320, the clearances shall be transferred without delay. When there is adverse information which does not warrant an interim action, but does require action in accordance with paragraph 2-320b, DISCO shall initiate the appropriate action concurrent with the transfer of the clearance.

(5) The DD Form 48-3, "Department of Defense Personnel Security Questionnaire (Updated)", is submitted by the contractor. The individual concerned shall not be required to submit a fully executed DD Form 48, DD Form 49, or DD Form 258 to accomplish the above action unless the basis of the previous clearance does not satisfy the investigative requirements of paragraph 2-308, ISM, or there is information which indicates that the granting of a clearance might not be clearly consistent with the national interest.

(6) An exception to the requirement for submission of a DD Form 48-3 to obtain a concurrent clearance can be made when an OODEP of a parent company becomes concurrently an OODEP of a subsidiary, or when an OODEP of a subsidiary becomes concurrently an OODEP of the parent company. He or she can be issued a concurrent clearance without submission of a DD Form 48-3 provided the new clearance being requested is not of a higher level than the current clearance. In these cases, the contractor will follow the procedures set forth in paragraph 26g, ISM. Any action by the government to suspend or revoke a concurrent clearance shall be equally applicable to all such clearances issued for the consultant or OODEP and the employers concerned will be so notified.

(7) When a cleared employee of a collocated cleared facility as described in paragraph 72c, ISM, is transferred to another collocated facility, DISCO, on receipt of the DISCO Form 562, will issue a DISCO Form 560 to the gaining facility provided there is no break in employment of more than three (3) working days.

d. When a contractor employee terminates employment prior to the completion of an investigation, such investigation may be terminated if this action is advantageous to the government. Should the investigation be completed only because it is considered more economical to do so, the results of the investigation will be recorded in the PSCF. If the case has been referred to the DISCR, OGC, OSD, they shall be notified immediately of the termination of the employee's employment.

e. If DISCO or the investigative agency determines that the full investigation cannot be completed to meet the standards prescribed for the level of clearance being granted, the investigation shall be stopped at that point. The DISCO shall be notified promptly and shall, in turn, notify the facility.

f. In all cases other than those described in paragraphs d and e above, a PCL action shall continue until the applicant's eligibility for a PCL has been determined by appropriate authority, unless it is established that the clearance is no longer required or the applicant has not requested the continued processing of his or her case under the provisions of section IV E of DoD Directive 5220.6 (reference (11)).

g. On receipt of an application for an interim CONFIDENTIAL clearance submitted by the contractor in accordance with paragraph 26d, ISM, DISCO may issue an interim CONFIDENTIAL clearance as prescribed in paragraph 2-308g(1). Prior to issuing a clearance DISCO shall ascertain from the DCII and the PSCF that no derogatory information exists which could preclude granting an interim CONFIDENTIAL clearance.

h. Immigrant aliens who are not RFI's who reside permanently in the U.S., intend to become U.S. citizens as soon as becoming eligible to do so, and have been determined qualified pursuant to paragraph 2-327, may be processed for PCL's in accordance with requirements established by paragraph 2-308. The investigation shall be expanded to include an interview with applicants to obtain statements of full disclosure with respect to their national allegiance, determine their reasons for being in the U.S., their intent to reside permanently in the U.S., and an expression of their general attitude toward the U.S. vis-a-vis the country to which they owe national allegiance. An immigrant alien contractor employee who does not reside or does not intend to reside permanently in the U.S. and obtain U.S. citizenship is not a bona fide candidate for issuance or continuance of a PCL. The processing of a PCL or any existing PCL for such an immigrant alien shall be administratively terminated by DISCO without prejudice to the individual concerned. DISCO will notify the contractor and the employee of the administrative termination. Residence or assignment of cleared Immigrant aliens outside the U.S., Puerto Rico, Guam, or the Virgin Islands, negates the basis on which the LOC was issued, and the LOC will be administratively terminated without prejudice by DISCO on receipt of contractor notification as outlined in paragraph 6b(6), ISM. Such individuals, on visits of 90 consecutive days or less within a 12-month period to foreign areas, are not considered to be assigned or be in residence outside the U.S. Visits in excess of 90 consecutive days duration shall invalidate any existing clearance.

2-308 Requirements for Security Clearances for Contractor Personnel. The actions requiring accomplishment with favorable results prior to granting LOC's to facilities are prescribed below for the various levels of PCL'S. Except for those foreign nationals eligible to be processed for a clearance under paragraph 2-323, foreign nationals, as defined herein, are not eligible for PCL's under the provisions of this regulation. To be processed as an applicant and to be eligible for clearance, an immigrant alien must evidence an "Alien Registration Receipt Card" (Form No. 1-151 or 1-551) and be a resident of and intend to reside permanently in the U.S., "Puerto Rico, Guam, or the Virgin Islands of the United States. \*

a. LOC's will be issued to facilities, provided the minimum investigative requirements for each category of information as set forth below are met, and provided information is developed which is sufficient for determination that the individual is eligible to be an applicant and to justify a determination that the clearance of the applicant is clearly consistent with the national interest.

b. TOP SECRET Personnel Security Clearance.

(1) For U.S. citizens, a BI is required.

(2) Immigrant aliens may not be authorized.

c. Interim TOP SECRET Personnel Security Clearance.

(1) For U.S. citizens, an interim TOP SECRET PCL may be granted only in those special cases when it is necessary to clear the personnel to prevent crucial delay in precontract negotiations or the award or

performance of a contract. Special authorization as to the need for granting an Interim TOP SECRET PCL shall, in each case, be obtained from the Head of the UA or his or her designated representative 10/. Prior to granting an interim TOP SECRET PCL, a NAC with favorable results shall be completed by the investigative agency pending the completion of the required BI.

(2) Immigrant aliens may not be authorized.

d. SECRET Personnel Security Clearance.

(1) For U.S. citizens, a NAC is required or, in the case of former military personnel eligible under paragraph 2-309a, an Entrance NAC is required.

(2) For Immigrant aliens, a BI is required. When an immigrant alien is admitted to the U.S. for a permanent residence, there is established a presumption that there has been a change of national allegiance from the native country to that of the U.S. When an immigrant alien becomes eligible for citizenship but elects not to become a citizen, the presumption of primary national allegiance to the U.S. is placed in doubt. As part of each personnel security investigation for access to classified information the immigrant alien applicant shall be interviewed by the DIS to determine if the applicant owes primary national allegiance to the U.S. Effective 1 year from the date of this issuance, DISCO shall identify those cleared contractor immigrant alien employees who have been eligible for U.S. citizenship for at least 12 months. DISCO shall then request a DIS interview of the individual to determine if the individual owes primary national allegiance to the U.S. On receipt of the DIS report, DISCO shall administratively review the case to determine if it is clearly consistent with the national security to continue the clearance.

e. Interim SECRET Personnel Security Clearance.

(1) For U.S. citizens, the contracting officer of the UA may request DISCO to grant interim SECRET PCL's when it has been determined that performance of the full investigative requirements prior to granting access to SECRET information to an individual will result in crucial delay in precontract negotiations or the award or performance of a contract. Satisfactory review of the DD Form 48 and the files of the DCII pending completion of the NAC is authorized as a basis for an interim SECRET PCL. As an exception to the foregoing procedures, the CSO is authorized to approve the grant, by DISCO, of an Interim SECRET PCL for alarm service personnel (when the service relates to the supplemental control requirements of paragraph 14, ISM) and personnel who require a clearance in accordance with paragraph 20e, ISM, when an emergency situation exists, which would render the facility incapable of adequately safeguarding classified material in its possession, and no contracting officer is available to approve the interim clearance request within the time required to negate the threat.

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10/ Each UA shall keep DISCO currently advised of the officials who have been designated by the Head of the UA for this purpose.

(2) For U.S. citizens with prior industrial PCL's, an interim SECRET PCL may be granted to a U.S. citizen employee who previously has been issued a LOC for a final SECRET or TOP SECRET clearance when there has been a lapse in employment for more than 12 but within 25 months since termination of the employment for which the LOC was issued, provided the employee has been subsequently employed in a position requiring access to SECRET information. Prior to granting an interim SECRET PCL, DISCO shall: (i) obtain the contractor's certificate indicating the date the previous SECRET or TOP SECRET clearance was issued and by whom it was issued; (if) conduct a satisfactory review of the DD Form 48 and the files of the DCII, and (iii) initiate a request for a current NAC. Special authorization as to the need for granting an interim SECRET PCL from the contracting UA is not required.

(3) Immigrant aliens may not be authorized.

f. CONFIDENTIAL Personnel Security Clearances.

(1) For U.S. citizens (personnel prescribed in paragraph 2-113 for FCL's and personnel required to be cleared by the government under paragraph 24a, ISM), a NAC is required.

(2) For U.S. citizens (contractor employees other than those listed in paragraph (1) above), the contractor will clear such personnel in accordance with the provisions of paragraph 24b, ISM. Such clearances may be revoked by DISCO in the event the contractor made an administrative error in granting the clearance or there is a bar to such a clearance, unknown to the contractor, which would have precluded its grant.

(3) For Immigrant aliens, a BI is required (see d(2) above and paragraph 2-327 for additional requirements ).

g. Interim CONFIDENTIAL Personnel Security Clearances.

(1) U.S. citizens (personnel prescribed in paragraph 2-113 for FCL's, personnel who will require access to NATO CONFIDENTIAL information, and personnel required to be cleared by the government under paragraph 24a, ISM) -- the contracting officer of the UA may request DISCO to grant interim CONFIDENTIAL PCL's when it has been determined that performance of the full investigative requirements prior to granting access to CONFIDENTIAL information to an individual will result in crucial delays in precontract negotiations or the award or performance on a contract. A review of the DD Form 48 and a check of the files of the DCII pending completion of the NAC is authorized as a basis for an interim CONFIDENTIAL PCL.

(2) U.S. citizens with prior industrial PCL's -- an interim CONFIDENTIAL PCL may be granted to a U.S. citizen employee who previously had been issued a LOC for a final CONFIDENTIAL, SECRET, or TOP SECRET clearance, when there has been a lapse in employment for more than 12 months but within 25 months since termination of the employment for which the LOC was issued, provided the employee has been subsequently employed in a position requiring access to CONFIDENTIAL information. Before granting an interim CONFIDENTIAL PCL, DISCO shall: (1) obtain the contractor's certificate indicating the date the previous CONFIDENTIAL, SECRET, or TOP SECRET clearance was issued and by whom it was issued; (if.) conduct a satisfactory review of the DD Form 48 and a

check of the files of the DCII; and (iii) initiate a request for a current NAC. Special authorization as to the need for granting an Interim CONFIDENTIAL PCL from the UA is not required.

(3) U.S. citizens (contractor employees other than those listed in paragraphs (1) and (2) above) may not be authorized.

(4) Immigrant aliens may not be authorized.

h. Prior Investigations Conducted by DoD Investigative Organizations.  
In most instances reinvestigation is not required if an individual: (i) has had no break in employment or clearance with a cleared facility which is greater than 12 months, (ii) has had a previous personnel security investigation conducted by an authorized DoD investigative organization which essentially is equivalent in scope to an investigation required by this regulation, and (iii) has not had any substantive adverse information from any source identified to DISCO.. There is no time limitation as to the acceptability of such prior investigation, subject to the provisions of paragraph 2-313 or other similar special programs having specified investigative requirements. In instances when the individual has had a break in employment or clearance in excess of 12 months, or there is no previous investigation, an appropriate investigation must be requested. If there is an appropriate prior investigation, but adverse information becomes known, an investigation shall be requested to substantiate or disprove the adverse information.

2-309 Conversion of Clearances for Civilian and Military Personnel of the Department of Defense and Certain Other Governmental Agencies.

a. User Agency and other Executive Branch Clearances. \*

(1) PCL's issued by a UA to civilian or military personnel who are U.S. citizens may be converted to industrial PCL's as follows:

(a) top level civilian or military personnel - 18 months from the time of separation from active federal service;

(b) retired civilian and military personnel of any grade with 19 years or more of federal service - 18 months from the date of retirement from active federal service;

(c) for other civilian or military personnel separated or retired from active federal service -- 12 months from the time of separation or retirement from active federal service; and

(d) National Guard and Reserve military personnel who actively participate in the Ready Reserve Program are processed for security clearances by the Military Departments in accordance with the procedures for active duty military personnel as referenced in DoD 5200.2-R (reference (rr)). Such security clearances are valid for conversion to industrial PCL's. Clearances granted to such personnel who have transferred to the standby or retired Reserve also may be converted to industrial PCL's within 12 months of a person's being placed in the standby or retired Reserve. \*



(2) Top level civilian personnel are defined as presidential appointees, civil **service** appointees of the super grades (GS-16 and above), and members of industry advisory committees who have been duly appointed by the head of the UA. Top level military personnel are those of the general and flag officer ranks.

(3) On receipt of a contractor's request for a PCL of a stated level for present or former civilian employees of government, or military personnel on active **service** or in the Ready Reserve Program (National Guard and Reserve), DISCO shall check with the following, as appropriate, for information as to the present or former security clearance of the individual and its investigative basis. The DISCO shall request to be advised of any information which indicates that continuance of the clearance for access to classified information may not be clearly consistent with the national interest. (A military TOP SECRET clearance based on a NAC plus 15 continuous years of military **service** or combined military and government service is a valid basis for converting such clearance. However, military TOP SECRET clearances issued prior to February 15, 1962, may be converted to industrial security clearances when based upon a NAC and 10 continuous years of service. In such cases, a BI is not required for conversion purposes. However, upon conversion of the clearance action, DISCO shall initiate immediate action to satisfy the current investigative requirements of DoD 5200.2-R (reference (rr)).

(a) For former top level civilian employees of the federal government and military personnel, check with PSCF.

(b) For former civilian employees of the Office of the Secretary of Defense, the Director for Personnel and Security, Washington Headquarters Services, the Pentagon, Washington, D.C. 20301.

(c) For current and former civilian employees or military personnel of the Departments of the Army and Air Force, including the Army National Guard and Air National Guard, USA Reserve and USAF Reserve, and also for personnel in standby or retired Reserve, the DCII, Defense Investigative Service, Personnel Investigations Center, P.O. Box 1211, Baltimore, MD 21203. Personnel security clearances granted by the Departments of the Army and Air Force are centrally recorded in the DCII.

(d) For current and former military personnel of the Navy, including the USN Reserve, and also for personnel in the standby or retired Reserve, the Commander, Naval Military Personnel Command (Code NMPC (81)/Pers-81), Washington, D.C. 20370.

(e) For current and former military personnel of the U.S. Marine Corps, including the USMC Reserve, and also for personnel in the standby or retired Reserve, the Commandant, Headquarters, U.S. Marine Corp, (Code MMRB-20), Washington, D.C. 20380.

(f) For former civilian employees of the Navy and the Marine Corps, the Security Officer of the activity where the individual had been last employed.

(g) For former civilian employees of the the National Aeronautics and Space Administration, the Director, NASA Security Office, ATTN : NIS, National Aeronautics and Space Administration, Washington, D. C. 20546. (DISCO will identify the Field Center involved. )

(h) For former civilian employees of GSA, the Director, Office of Internal Security, General Services Administration, Washington, D.C. 20405.

(i) For former civilian employees of Department of State, the Chief, Division of Domestic Operations, Office of Security, Department of State, Washington, D. C. 20520.

(j) For former civilian employees of Department of Commerce, the Director, Office of Security, Department of Commerce, Washington, D. C. 20230.

(k) For former civilian employees of the Small Business Administration, the Security Officer, Office of the Inspector General, Small Business Administration, Washington, D. C. 20416.

(l) For former civilian employees of the National Science Foundation, the Security Officer, Office of Personnel, National Science Foundation, Washington, D. C. 20550.

(m) For former civilian employees of the Department of Treasury, The Assistant Director of Personnel (Personnel Security) , Treasury Department, Washington, D. C. 20020. \*  
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(n) For former military personnel of the Coast Guard, the Chief, Intelligence and Security Division, Office of Operations, U.S. Coast Guard, Washington, D. C. 20593.

(o) For former civilian employees of the U.S. Coast Guard, the Chief, Personnel Security Branch, Personnel Service Division, U.S. Coast Guard, Washington, D. C. 20593.

(p) For former civilian employees of the Department of Transportation, the Director, Office of Security, Department of Transportation, Washington, D.C. 20590.

(q) For former civilian employees of the Department of Agriculture, the Chief, Security, Employee Management and Training Staff, Office of Personnel, Department of Agriculture, Administration Building, Washington, D.C. 20250.

(r) For former civilian employees of FEMA, the Director, Office of Security, Federal Emergency Management Agency, Washington, D. C. 20472.

(s) For former civilian employees of the Department of the Interior, the Chief, Enforcement and Security Management Division, Office of Administrative Services, Department of the Interior, Washington, D.C. 20240.

(t) For former civilian employees of the Department of Labor, the Director, Personnel Management, Office of the Assistant Secretary for Administration and Management, Department of Labor, Washington, D.C. 20210.

(u) For former civilian employees of EPA, The Assistant Inspector General, Office of Management and Technical Assessment, Environmental Protection Agency, Washington, D.C. 20460.

(v) For former civilian employees of the Federal Reserve System, the Chief of Security, Division of Support Services, Board of Governors, Federal Reserve System, Washington, D.C. 20551.

(w) For-former civilian employees of the Department of Justice, the Director, Security Staff, Department of Justice, Washington, D.C. 20530.

(x) For former civilian employees of the U.S. Arms Control and Disarmament Agency, the Security Officer, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451.

(Y) For former civilian employees of the White House Office staff and those persons" cleared by the White House, the White House, ATTN : Security Office, Washington, D.C. 20500.

(z) For former civilian employees of the GAO, the Director, Office of Security and Safety, U.S. General Accounting Office, Washington, D.C. 20548.

(aa) For former employees of the USIA, the Director, Office of Security, United States Information Agency, Washington, D.C. 20547.

(4) Following the verification of previous PCL, a LOC for the appropriate level shall be issued by DISCO to the facility, provided:

(a) the investigative basis meets the current requirements of DoD 5200.2-R (reference (rr)), and

.(b) the former clearing authority reports there is no information indicating that continuance of the clearance is not clearly consistent with the national interest.

(5) Applications for conversion of clearance are made by submission of DD Form 48-3. In addition, except in the case of individuals currently employed by the federal government or on active military duty, the application shall include an exact reproduction of Standard Form 50, "Notification of Personnel Action," in the case of former civilian employees of the government, or DD Form 214, "Certificate of Release or Discharge from Active Duty," in the case of former military personnel. However, the individual being considered for a PCL shall be required to accomplish all forms required by this regulation for an individual with no previous clearance when:

(a) the basis of the investigation does not meet the \*  
current requirements of DoD 5200.2-R (reference (rr)); \*

(b.) the clearance requirement is for a higher level than  
. is reflected in the clearance records;

(c) there has been a greater lapse of time than that set  
forth in paragraph a above;

(d) there is information which indicates that granting of  
a clearance may not be clearly consistent with the national interest; or

(e) the DISCO is unable to verify the prior clearance,  
determine the investigative basis thereof, or obtain an answer to the question  
as to whether continuation of the clearance may be clearly consistent with the  
national interest.

b. Department of Energy (DOE) and Nuclear Regulatory Commission (NRC) Clearances. The "Q" and "L" clearances granted by DOE and NRC are considered acceptable for issuance of a DoD industrial PCL. The "Q" clearance is considered an authoritative basis for a DoD clearance at the TOP SECRET level and the "L" clearance is considered an authoritative basis for a DoD clearance, at the SECRET level. A contractor may request a DoD industrial PCL for an employee who currently has a "Q" or "L" PCL or previously held such a clearance, when there has not been a lapse of more than 12 months since termination of the PCL. Application for a DoD industrial PCL based on a "Q" or "L" clearance may be made by submitting one copy of the DD Form 48-3 to DISCO. The "Job Title and Description of Duties" block in part 1 of the DD Form 48-3 will be annotated: "DOE (or NRC) 'Q' (or 'L') Conversion Requested." The "Q" or "L" number, if known, will be indicated. Prior to issuing a LOC to the contractor, DISCO will obtain verification of the "Q" "or "L" clearance, the date the investigation was completed, the name of the investigative agency and case file number, if available, and a statement from DOE or NRC that no derogatory information has developed since the clearance was granted which has not been resolved. DISCO can obtain the required information by writing to: (i) Director, Safeguards and Security, U.S. Department of Energy, Washington, D.C. 20545, or (ii) Director, Division of Security, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

c. The contractor will be advised that the individual being considered for a PCL must accomplish all forms required by this regulation for an individual with no previous clearance when:

(1) the existence of "Q" or "L" clearance cannot be verified,

(2) there has been a lapse of more than 12 months since  
termination of the clearance, or

(3) the required statement that no unresolved or derogatory  
information has developed since the clearance was Issued is not received from  
DOE or NRC. (If a statement is received that unresolved or derogatory  
information has been developed, it will also be necessary to request the  
contractor to have the employee complete all forms necessary for an initial  
clearance request.)

d. Investigations Conducted and Clearance Granted by Other Agencies of the Federal Government. Whenever a prior investigation or personnel security determination (including clearance for access to information classified under Executive Order 1-2356 (reference (w)) of another agency of the Federal-Government meets the investigative scope and standards of DoD 5200.2-R (reference (rr)), such investigation or clearance may be accepted for the investigative or clearance purposes of the Regulation, provided that the employment with the Federal agency concerned has been continuous and there has been no break longer than 12 months since completion of the prior investigation, and further provided that inquiry with the agency discloses no reason why the clearance should not be accepted. If it is determined that the prior investigation does not meet the provisions of this paragraph, supplemental investigation shall be requested. The procedures provided in paragraphs a(4) and (5) above apply. \*

2-310 Ministrative Termination of Personnel Security Clearances.

a. Requests for administrative termination of PCL's submitted to DISCO in accordance with paragraph 29a, ISM, shall be reviewed for accuracy and completeness. If the "Personnel Security Clearance Change Notification" (DISCO

Form 562) has been signed by the contractor and the employee, DISCO will reflect the change in the PSCF and the date the administrative termination action was completed. The DISCO will advise the contractor by automated letter of the completed action. Contractor-granted CONFIDENTIAL clearances which are administratively terminated will be handled in accordance with the requirements outlined in paragraph 29, ISM.

b. When the DUSD(P), ATTN: DSP&P, or higher authority, determines that a PCL or PCL action in process was requested or granted in error or is no longer required, he or she may, at his or her option, direct an administrative termination of such clearance or clearance action in process without prejudice to the individual concerned or jeopardy to the individual's employer's operations. The DISCO shall advise the CSO, the contractor, and the individual concerned, as appropriate, that:

(1) the PCL or PCL action in process is being administratively terminated because it was initiated or issued in error or is no longer required;

(2) the action in no way reflects adversely on the individual or his or her personnel security eligibility; and

(3) the provisions of this paragraph shall not operate to conflict with paragraph 2-308f(2).

The DISCO records shall be annotated to reflect the action taken. PCL'S or PCL actions so terminated may be revalidated in accordance with procedures established in paragraph 29, ISM.

c. If the request submitted to the CSO pertains to an OODEP, it will be reviewed to ensure that the request is justified and the individual is an OODEP who is excludable. If the request is proper, DISCO Form 562 will be annotated to reflect that the CSO concurs in the recommendation and then be forwarded to DISCO with one copy of the organization's minutes required by paragraph 22e(1), ISM. The CSO will also amend the FCL records, as appropriate, prior to forwarding the DISCO Form 562 to DISCO. The DISCO will:

(1) change the PSCF to reflect the date of the requested action, and

(2) advise the contractor by automated letter of the completed action.

d. If a case is referred to the CSO in accordance with paragraph 29e, ISM, the employee will be requested (certified mail, return receipt requested) to show cause within 30 days as to why the recommended action should not be completed. If the individual fails to respond within 30 days from receipt of such request to show cause, the failure to respond will be considered a valid indication that the employee no longer objects to the administrative termination of his or her clearance and the case shall be referred to DISCO for appropriate action. If the individual presents justification for retention of clearance, which in the judgment of the CSO is adequate, the contractor and the employee shall be advised that the request for administrative termination is not approved and the clearance shall remain in effect. If, in the judgment of the CSO, the employee has not submitted "

adequate justification, the case, with appropriate rationale and recommendations will be referred to the **Director, DIS, ATTN:** Deputy Director (Industrial Security) for final determination. The Director, DIS, ATTN: Deputy Director (Industrial Security) will notify DISCO, the CSO, the contractor, and the employee of the final decision in the matter. The Director, DIS will make the final determination in administrative termination of PCL cases in which the employee has objected to termination action.

**2-311**      Administrative Downgrading of TOP SECRET Personnel Security Clearances.

a. Requests for administrative downgrading of TOP SECRET PCL's submitted by contractors pursuant to paragraph 30, ISM, shall be reviewed by DISCO for completeness and accuracy. If the DISCO Form 562 is complete and signed by the contractor's FSO, the DISCO will make the necessary change to the PSCF and will advise the contractor by automated letter of the downgrading action.

b. The DISCO will reinstate TOP SECRET PCL's which have been downgraded to a lower level, provided a requirement for such access exists and there has not been a lapse of more than 24 months from the date of the downgrading action. On receipt of a properly completed and signed DISCO Form 562 requesting a reinstatement of clearance, the DISCO will make the required change in the PSCF and advise the contractor of the date of the reinstatement by issuance of a new LOC for TOP SECRET. The new LOC will bear the date of the upgrading action.

c. When there has been a lapse of more than 24 months from the date of the downgrading action, DISCO will issue anew LOC, provided the individual has been continuously employed by the same contractor since the date of the downgrading action and a valid need exists for the TOP SECRET clearance. If the contractor knows of no questionable or adverse information, the contractor shall make application for the new LOC by submitting one copy of DD Form 48-3 to DISCO. If the DISCO review of the DD Form 48-3 and other sources confirms that there is no adverse information present and the individual has had a BI conducted at any time during his or her employment with this contractor, a new LOC will be forwarded to the contractor. In the event the case involves adverse information, an investigation will be requested to substantiate or disprove the adverse information.

**2-312**      RESTRICTED DATA, Additional Clearance Requirements.

a. When access to CONFIDENTIAL RESTRICTED DATA as defined in the Atomic Energy Act of 1954 (reference (c)), as amended, is required by any contractor employee, other than one who has been cleared by the DoD based on a NAC under the provisions of paragraph 24a, ISM, DISCO will obtain a NAC.

b. Requirements for clearances for access to TOP SECRET or SECRET RESTRICTED DATA shall be in conformance with paragraphs 2-308b, c, or d, as applicable.

c. Interim SECRET, interim CONFIDENTIAL, or contractor CONFIDENTIAL PCL's do not meet this requirement and their use for access to RESTRICTED DATA information is not authorized. Interim TOP SECRET PCL's are valid for access to RESTRICTED DATA no higher than SECRET.

2-312.1 Requirements for Access to CNWDI. A final TOP SECRET or SECRET PCL granted in accordance with paragraph 2-312a, b, or c above, is valid for access to CNWDI of the same or lesser security classification, provided the individual has been given a CNWDI security briefing. In rare instances an immigrant alien may possess a unique or very unusual talent or skill that is essential to the U.S. Government and not possessed to a comparable degree by an available U.S. citizen. In such exceptional cases, an affirmative decision shall be made that it is in the overall best interests of the U.S. to grant CNWDI access to an immigrant alien. In such cases the contractor must submit a request to the contracting officer with full justification. If the contracting officer determines that the justification is appropriate in accordance with the foregoing criteria, the case will be forwarded through appropriate channels via the head of the UA to the DUSD(P), ATTN: DSP&P.

2-313 Requirements for Access to Classified COMSEC Information.

a. Access to classified COMSEC Information may be afforded U.S. citizens who have been granted a final PCL by the U.S. Government and have a need-to-know. An interim TOP SECRET clearance is valid for access to COMSEC information; however, only at the SECRET level and below. Contractor employees who are immigrant aliens are not eligible for access to classified COMSEC information.

b. Before a COMSEC account can be established and a contractor may receive or possess COMSEC material accountable to a COR, individuals occupying the positions of FSO, COMSEC custodian, and alternate COMSEC custodian must possess a PCL based on a BI current within 5 years and have been given a COMSEC briefing (see paragraph d below) <sup>11/</sup>. The BI relative to a "Q" clearance is acceptable provided it is current as required.

c. On receipt of a request from a contractor (see paragraph 15b, CSISM) for the basis of the current PCL granted to the FSO, the COMSEC custodian, and alternate COMSEC custodian DISCO shall accomplish the following.

(1) Review the PSCF to ascertain the investigative basis and the date the most recent periodic reinvestigation was completed.

(2) Provide the contractor, with a copy to the contractor's CSO, the basis for the current PCL and the date of the BI, and, if appropriate, the date of the latest periodic reinvestigation.

(3) If an Individual occupying any of the three positions identified above has not been the subject of a BI current within 5 years, request the contractor to submit a completed DD Form 49 and FD Form 258.

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<sup>11/</sup> Until the required BI's are favorably completed, a COMSEC account may be established to receive and hold SECRET COMSEC material. No material designated CRYPTO shall be released to the account until completion of the BI's.



(4) On receipt of the DD Form 49 and **FD Form 258**, **initiate action** to obtain a current **BI**.

(5) If the **BI** is favorable, annotate the individual's **PSCF** and **forward** notification to the contractor with a copy of the notification to the contractor's **CSO**.

d. The **DISCO** shall be responsible for initiating action to provide for the required update of the **BI** by requesting the contractor whose employee (s) are involved to process new clearance forms 6 months prior to the 5-year anniversary date of the previous **BI**.

e. A representative of the U.S. Government shall brief the **FSO**, the **COMSEC** custodian, and the alternate custodian. If the briefing is not conducted by the **CSO**, the government representative that **conducted** the briefing shall provide the **CSO** written notification upon completion of the briefing. Other contractor employees will be briefed by the **FSO**, the **COMSEC** custodian, alternate **COMSEC** custodian, or another appropriate individual designated in writing by the **FSO** prior to being authorized access to classified **COMSEC** information. (For contractor activities on a **UA** installation, the provisions of paragraph 1-108, **ISR**, apply.)

#### 2-314 COMSEC Briefing and Debriefing Requirements.

a. All contractor personnel who require access to **classified COMSEC** information in the performance of their duties shall be briefed before access is granted. The **FSO**, the **COMSEC** custodian, and the alternate custodian will be briefed by government representatives as set forth in paragraph 2-313. Other contractor personnel will be briefed by the contractor. The purpose of the briefing is to ensure that the employee understands:

(1) the unique nature of **COMSEC** information and its unusual sensitivity,

(2) the special security requirements for the handling and protection of **COMSEC** information, and

(3) the penalties prescribed in Title 18, U.S.C., §§ 793, 794, and 798 (reference (nn)), for willful disclosure of **COMSEC** information.

b. All personnel having access to **COMSEC** information shall be given a periodic **rebriefing** at least annually. The **debriefing** will be conducted by those individuals designated in paragraph a above to give the initial briefings. These briefings shall emphasize particularly any security deficiencies noted during recurring inspections.

c. The **FSO**, **COMSEC** custodian, and alternate custodian shall be given an oral **debriefing** by a representative of the U.S. Government within 90 days after the need for access to **COMSEC** information is discontinued. If one of these individuals remains employed, the contractor shall submit a report to **DISCO** providing the person's name and social security number and advising that the individual no longer requires a **BI**, current within 5

years, for access to COMSEC information. Other employees shall be given an oral debriefing by the contractor. The contractor shall maintain a record of all debriefings for a minimum of 3 years.

2-315 Additional Requirements for SENSITIVE COMPARTMENTED INFORMATION Material.

a. The provisions of the ISM apply to research, development, and production of SENSITIVE COMPARTMENTED INFORMATION. In addition, special security requirements supplementing the ISM may be prescribed by a UA for SENSITIVE COMPARTMENTED INFORMATION contracts. For SENSITIVE COMPARTMENTED INFORMATION contracts awarded by military department procurement activities on behalf of the NSA, the NSA will prescribe the special security requirements.

b. In the case of SENSITIVE COMPARTMENTED INFORMATION contracts awarded by military department procurement activities for NSA, NSA shall be responsible for exercising security controls over the contract.

c. When access to NSA SENSITIVE COMPARTMENTED INFORMATION material or information is involved, special procedures for processing clearances shall be as prescribed by NSA.

d. Personnel access authorizations for SENSITIVE COMPARTMENTED INFORMATION shall be processed in accordance with paragraph 1-305d.

e. In the case of SENSITIVE COMPARTMENTED INFORMATION contracts awarded by and for a UA, an activity designated by the UA, shall be responsible for exercising security controls over the contract..

f. Access to SENSITIVE COMPARTMENTED INFORMATION will be granted to contractor employees requiring access by the activity designated to exercise security controls over the contract as provided above.

g. Denial or revocation of authorization for access to SENSITIVE COMPARTMENTED INFORMATION is not appealable.

2-316 Denial of Admittance to User Agency Installations.

a. The provisions of this regulation shall not be interpreted as modifying in any way the authority of the Commander or Head of a UA installation to deny admittance of any individual to an installation under his or her control.

b. A PCL under the DoD Industrial Security Program shall not be requested for the purpose of determining an individual's eligibility for admittance to a UA installation when access to classified information is not involved.

c. Denials of admittance to a UA installation are not appealable under the DoD Industrial Personnel Security Clearance Program.

2-317 Intelligence Briefing and Debriefing Requirements. The UA activity controlling the contract and the activity to be visited by contractor employees are responsible for complying with the applicable policy covering the release

of intelligence information to contractors and for advising contractors and their employees of restrictions pertaining to the reproduction, release, dissemination, or disposition of intelligence information given to the contractors or their employees. Briefing and debriefing requirements in addition to those imposed by paragraph 5g, ISM, shall be provided by, or in accordance with, instructions of the UA 12/.

2-318 CONFIDENTIAL Security Clearances for Personnel of Colleges and Universities. Before granting access to CONFIDENTIAL information to U.S. citizens employed by colleges and universities, the completion of a NAC with favorable results is required. The provisions of this paragraph are not retroactive. PCL's previously granted under the old-procedures remain valid as long as the individuals continue to be employed by the same college or university. However, clearances granted under the old procedures are not transferable.

2-319 Types of Personnel Investigations. The types of personnel security investigations required for the various personnel security clearance actions are outlined in DoD 5200.2-R (reference (rr)). No other types of investigations are authorized.

a. NAC for Personnel. A check of specific national agencies for information concerning the person who is subject to investigation. In the event derogatory or questionable information concerning the individual is disclosed by a NAC or by the applicant, the inquiry will be extended as necessary to obtain such additional information as may be required to substantiate or disprove the information. The DISCO shall specifically direct attention to derogatory information disclosed by the applicant in the PSQ to the Personnel Investigations Center (PIC) for appropriate use and transmittal to the designated investigative elements when requesting a NAC.

b. - Background Investigation. A BI is a thorough and complete investigation to develop information as to whether the access to classified information by the individual being investigated is clearly consistent with the national interest. It shall make inquiry into pertinent facts bearing on the individual's trustworthiness, integrity, reputation, and loyalty to the U\*S. A BI shall be conducted in accordance with the DoD standards on this subject. It shall normally cover the 5-year period (15 years for an immigrant alien) of the individual's life immediately preceding the investigation or from the date of the individual's eighteenth birthday whichever is the shorter period (but at least 5 years in the case of immigrant aliens regardless of age), unless:

(1) derogatory information is developed in the course of the investigation, in which event the investigation shall be extended to any period of the individual's life necessary to substantiate or disprove the information, or

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• 12/ The policy on the release of intelligence information is contained in Director of Central Intelligence Directive No. 1/7 (reference). The directive is implemented within DoD by DoD Instruction 5230.22. Release to contractors is defined in the directive as the visual, oral, or physical disclosure of classified information.

(2) additional investigation is specifically required by competent authority (for example, DISCO, DISCR, and Director, DIS).

C. Other Investigations. Whenever a prior investigation by any investigative agency of the federal government meets the standards prescribed by the DoD, eligibility for clearance maybe determined under the conversion procedures of paragraph 2-309 based on the review of the prior investigation, provided that service by the employee, in a cleared status, has been continuous since that investigation with no break in service longer than 12 months. Such acceptance shall be conditioned upon an Inquiry by DISCO to the previous employer(s) which discloses no reason why the investigation should be expanded or updated, with the possible resulting requirement for adjudication under the DoD Industrial Personnel Security Clearance Program.

2-319.1 User Agency Responsibility to Report Adverse Information. The Commander or Head of a UA activity shall report to DISCO any adverse or questionable information which comes to his or her attention, concerning a contractor employee who has been cleared, or is in the process of being cleared, for access to **classified** information, which may indicate that such access is **not** clearly consistent with the national interest.

2-320 Denial, Suspension, or Revocation of Personnel Security Clearances.

a. In the event adverse information is developed by a review of records or investigation, the scope of the inquiry will be enlarged to the extent necessary to obtain such additional information as may be required as a basis to determine whether or not a PCL may be granted. The DISCO may not deny a PCL to a contractor's employee, but shall make a recommendation to deny such PCL when information disclosed by an Investigation indicates that the granting or continuance of a PCL is not clearly consistent with the national interest. This recommendation, with a report of all pertinent facts, shall be transmitted promptly to the DISCR, OGC, OSD. A copy of the recommendation shall be transmitted promptly to HQ DIS.

b. In the event adverse information is obtained concerning an individual who previously had been granted a clearance by the government or by a contractor, an inquiry shall be initiated to obtain such additional information as may be required as a basis to determine whether or not the clearance should be revoked. When the information developed indicates that revocation appears justified, DISCO shall address recommendations to the DISCR, OGC, OSD. A copy of the recommendations shall be transmitted promptly to HQ DIS.

c. Whenever there is probable cause to believe, on the basis of all the facts available, that interim action is warranted in the interests of national security, the PCL shall be temporarily suspended pending a final determination by DISCR, OGC, OSD. DISCO or the CSO shall recommend suspension action to the Director, DIS, Attn: Deputy Director (Industrial Security). These cases will be afforded the highest possible priority and acted on expeditiously. Suspension under this regulation shall be taken only by the Director, DIS or, when absent, by the Deputy Director (Industrial Security), HQ DIS after coordination with the OGC, OSD, and the ODUSD(P). The authority to invoke suspension action may not be further delegated. On taking the suspension action, DIS shall immediately notify: (i) the individual concerned and provide reasons for the action, (ii) the facility to which the LOC for the

Individual was granted, (iii) the CSO, (iv) DISCO, and (v) all concerned UA and procurement activities. The CSO shall request the facility to provide positive assurance that the Individual will not have, and can be effectively excluded from, access to all classified information in the possession of the facility, and that all outstanding visit authorizations requiring access by the Individual have been canceled. The facility is to be placed on notice that the suspension of clearance is a temporary action pending a final determination by DISCR. In all cases where the suspension action involves an OODEP, the eligibility of the FCL shall be reviewed. The CSO shall apply the procedures as appropriate under paragraph 2-121d, the same as if DISCR had taken the suspension action. The Director, DIS shall give top priority in completing the investigation of the case. A full report of the case shall be made promptly to the DISCR, OGC, OSD.

d. The withdrawal of an interim PCL as described in paragraph 2-301b, ISR, shall not be construed as denial, suspension, or revocation of clearance and referral of the case to the DISCR, OGC, OSD, is not required prior to the completion of the investigation; however, the DISCR, OGC, OSD, shall be notified promptly of all such withdrawals of interim PCL and the basis for it.

e. In the event a determination has been made by DISCR to authorize access to CONFIDENTIAL or SECRET information and a subsequent requirement develops for access to a higher classification level than was authorized by DISCR, DISCO shall request that the investigation be brought up to date and shall submit the case together with a recommendation and a report of all pertinent facts of the DISCR, OGC, OSD for a determination with respect to the higher level of access requested.

f. In the event a determination is made under the procedure established in DoD 5220.6 (reference (11)) that an individual is eligible for a PCL, such clearance shall be granted by DISCO only if the requirement for it still exists. When the PCL is not granted, the contractor and the employee concerned shall be advised of the individual's security eligibility for a PCL and that such clearance can be revalidated in accordance with paragraph 29, ISM.

g. Information developed in the course of official investigations may be disclosed only to those who have an official requirement for such information. DoD policy strictly prohibits the disclosure of information developed by official investigation to a contractor who is the employer of the subject of the investigation. Therefore, to ensure continuing compliance with this fundamental requirement, the following guidance is provided.

(1) No unfavorable information on an individual being considered for an access authorization shall be discussed or transmitted in any manner to a representative of a company where such an individual is employed.

(2) Any interrogation of, or discussions with, employees or other persons during the course of an official inquiry or investigation of an employee shall be conducted in such a manner as to avoid conveying to the person interviewed, to the maximum extent possible, the derogatory information that may have come to the attention of the DoD.

(3) Particular care shall be exercised to avoid communicating, either formally or informally outside official **government** channels, substantive information of a derogatory nature pertaining to an individual who has received a final favorable "determination.

2-321 Access to NATO Classified Information. A final PCL granted by the DoD for U.S. citizens is valid for NATO information of the same or lesser security classification, provided the individual has been given a security briefing in accordance with paragraph 85d, ISM. If access to COSMIC/TOP SECRET is involved, the individual shall sign a certificate to the effect that he or she has been briefed on his or her responsibilities for safeguarding COSMIC/TOP SECRET information. CONFIDENTIAL clearances granted by the contractor are valid for access to NATO RESTRICTED information only. Interim CONFIDENTIAL or interim SECRET clearances granted by DISCO are not valid for access to COSMIC/TOP SECRET, NATO SECRET, or NATO CONFIDENTIAL information. An interim TOP SECRET PCL is valid for access to NATO information classified no higher than SECRET. Immigrant aliens or aliens issued reciprocal clearances are not authorized access to NATO classified information (see paragraphs 20c, 24a(2), 31c, 85d, and 86, ISM).

2-322 U.S. Security Assurances for U.S. Citizens Under Bilateral Reciprocal Security Agreements. When a foreign government with whom the DoD has entered into a bilateral reciprocal industrial security agreement (pursuant to paragraph 2-117) desires that a U.S. citizen be cleared for access to that government's information, DIS will follow the procedures established by the applicable agreement.

2-323 Security Assurances for Nationals of Signatory Governments Under Bilateral Reciprocal Industrial Security Agreements. When a national of a foreign government which has entered into a "bilateral reciprocal industrial security agreement with the DoD (paragraph 2-117) requires a PCL for access to U.S. classified information, DIS will follow the procedures established by the applicable agreement. Persons granted reciprocal clearances under the provisions of this agreement are subject to the access limitations set forth in paragraph 2-117a(1) through (7).

2-324 Requirements of the Nuclear Weapon Personnel Reliability Program (PRP).

a. Contractor employees assigned to training for, or performance of, duties in critical or controlled positions as defined in DoD Directive 5210.41 (reference (pp)) shall be screened, evaluated, and certified by the certifying official in accordance with requirements and procedures set forth in DoD Directive 5210.42 (reference (qq)).

b. Contractor employees who are found not qualified under the PRP shall be so advised in writing of the reasons for their disqualification and of their rights to request reviews by the reviewing official on an individual basis.

c. Certifying officials and reviewing officials, as defined in reference (qq), shall be designated formally in writing.

d. contracting officers shall include in contracts which involve the Nuclear Weapon PRP the requirements and responsibilities of the contractor as set forth in enclosure 2 of reference (qq).

2-325 Reserved.

2-326 Reserved.

2-327 Immigrant Alien Clearance for Access to SECRET and CONFIDENTIAL Information. On receipt of a contractor's request for authority to process an immigrant alien for a SECRET or CONFIDENTIAL clearance, the contracting officer shall forward the request to the appropriate official 13/ designated in appendix F, DoD 5200.2-R (reference (rr)). On receipt of the approval or denial of the authorization request by the designated official, the contracting officer shall so forward the decision to the requesting contractor and provide an Information copy to DISCO (or to the CSO if the immigrant alien is an OODEP). Clearances granted to immigrant aliens are not transferable except in the case of a MFO and will be administratively terminated on termination of employment.

#### Part 4. MAINTENANCE OF FACILITY FILES AND DISCO RECORDS

2-400 Application.

a. Each CSO will be responsible as the official and sole office of record for the maintenance of all documents and records pertaining to contractor facilities under cognizance.

b. The DISCO shall maintain clearance records pertaining to contractor FCL and PCL actions.

2-401 Maintenance of Facility Folders. The file folder on each facility shall contain all original documentation with respect to the facility to include, but not limited to, the following:

a. initial request for FCL and justification for retention or continuation;

b. the DD Form 441 with DD Form 441-1, when applicable -- the CSO of each facility of a MFO shall forward the original DD Form 441-1 to the CSO of the HOF;

c\* the DD Form 441s and all correspondence and associated documentation, including agreements and determinations pertaining to FOCI factors in the case;

d. data required on HOF or parent, if and when applicable;

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13/ Non-DoD UA's should submit their requests to the Head of the UA or the appropriate designee.

e. actions by boards of directors or **similar** executive bodies, as prescribed by paragraph 2-113;

f. the DD Form 374;

g. DIS FL 381-R and all relevant correspondence pertaining thereto;

h. the DIS Forms 1149 and 1150, when used;

i. the DIS Form 1148, when used; and

j. all relevant documentation, whenever the FCL has been denied, suspended, or revoked for cause in accordance with paragraph 2-113 of this regulation.

2-402 Responsibilities of the Cognizant Security Office.

a. In addition to maintaining the file folder with contents as described in paragraph 2-401 above, the CSO shall be responsible for ensuring that the very latest security inspection results are available in order to promptly provide UA's and other requesters Information in connection with the current clearance status and ability to physically safeguard classified material.

b. CSO's shall be responsible for promptly forwarding a legible copy of DIS Form 553 to DISCO under the following circumstances:

(1) when initiating a FCL;

(2) when granting an interim FCL;

(3) on granting a completed FCL;

(4) when there is a significant change in the facts pertaining to a facility such as a change of name, address, ownership, or level of the FCL ;

(5) on invalidating a FCL;

(6) 'when processing an invalid FCL to a valid status; and

(7) on downgrading or termination of a FCL under paragraphs 2-111 or 2-119, or on suspension or revocation of a FCL under paragraph 2-121.

c. When a FCL action is reported to DISCO, the interim, pending, or completed nature of the *action shall be clearly* indicated. When a DIS Form 553 supersedes one previously submitted to DISCO, this shall be clearly indicated on the new card.

d. CSO's shall be responsible for promptly forwarding to DISCO any information received from a contractor concerning:



(1) termination of an employee, indicating the reason for termination;

(2) the elevation of a cleared employee to the position of an OODEP, or the deletion of a cleared individual from a position of an OODEP when the PCL is to be retained at the current level; or

(3) refusal of a terminated employee to sign the security termination statement as prescribed by paragraph 5g, ISM, provided the inquiry required by paragraph 5-106 indicates that the refusal was deliberate. The CSO shall report the reason for termination of employment, the circumstances surrounding the individual's refusal to sign the termination statement, and the identification of the activity where the report of the incident is filed. If the failure to sign the termination statement was due to an omission during the termination proceedings as contrasted with a refusal to do so, this fact shall be clearly indicated on the report submitted to DISCO.

#### 2-403 Responsibilities of DISCO.

a. When contractor personnel are cleared for access to classified information by DISCO, such information will be made a matter of record in the PSCF. DISCO will verify PCL status only to cleared DoD contractors, UA's, and other authorized government agencies.

b. On notification of the death or termination of employment of such cleared contractor personnel, DISCO shall make such information a matter of record in the file.

c. DISCO shall also annotate its records and maintain the file to reflect any change in the clearance status of the contractor employee, including such actions as suspensions and revocations.

d. On receipt of the DIS Form 553 from the CSO, DISCO shall enter such information into its record system. DISCO shall update its records, as appropriate, on receipt of any subsequent DIS Forms 553 submitted by the CSO on the facility.

#### 2-404 Use of Information.

a. Authorized requesters may obtain verification of PCL's on contractor personnel by submitting requests for such information to DISCO which adequately identifies the individual as follows: the individual's last name, first name, middle name, date and place of birth, and social security number if known. The DD Form 555 may continue to be used for this purpose.

b. Requests for information pertaining to contractor facilities are to be submitted to the appropriate CSO.